



**Request for Proposals for the Provision of Tractors and grass cutting slashers for Airports Company South Africa on an Adhoc basis over a period of 60 months.**

**Bid Number:** : COR7143/2023

**Issue Date** : 21 June 2023

**Briefing Session and time** : 6 July 2023 @ 12:00PM

**Query Closing Date** : 28 July 2023

**Bid Closing Date and Time** : 4 August 2023 @ 12:00PM

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**Western Precinct, Aviation Park, O.R. Tambo International Airport, 1 Jones Road, Kempton Park, Gauteng, South Africa, 1632**  
**P O Box 75480, Gardenview, Gauteng, South Africa, 2047**  
**[www.airports.co.za](http://www.airports.co.za)**

Airports Company South Africa SOC Ltd Reg No 1993/004149/30 VAT no 4930138393 Board of Directors: Advocate S Nogxina (Chairperson), M Mpofu (Chief Executive Officer), N Zikala-Mvelase, N Nokwe-Macamo, Y Pillay, K Esterhuizen, GA Victor, D Hlatswayo, Dr KH Badimo, F Sefara (Company Secretary)



## 1. SECTION 1: INSTRUCTIONS TO BIDDERS

### 1.1. Access to RFP documents

Tenders are available on [www.etenders.gov.za](http://www.etenders.gov.za) and [www.airports.co.za](http://www.airports.co.za). Kindly print and complete.

#### Submission of bid documents

The bid documents must be signed and completed by a person who has been given authority to act on behalf of the bidder. The bottom of each page of the bid documents must be **signed or stamped** with the bidder's stamp as proof that the bidder has read the bid documents. Bid documents must be submitted on or before **12:00PM on the 4<sup>th</sup> of August 2023** using the following method(s):

- Bidders should submit their proposals via email to [Alicia.Sekoati@airports.co.za](mailto:Alicia.Sekoati@airports.co.za) only.
- Please note that the email incoming message size limit is 35MB, please ensure that you do not exceed this limit as your bid will not be received. If you submit your bid in several emails, please clearly label (by numbering) the emails in the subject line so that I know how many emails to expect (E.g., COR7143/2023: XXX LTD email 1 of 7). Also, if you submit your bid in several emails, please ensure that all of your emails are sent/received before the deadline of **4 August 2023 @12:00PM**.
- Please don't wait until the last minute to send your submissions.
- No physical submissions will be accepted.
- ACSA will only evaluate the information sent/received before deadline. No excuses.
- Acknowledgement of receipt emails will be sent to bidders by **7 August 2023 @ 12:00pm**. If you have not received one by that date and time, please follow up. The deadline for following up on acknowledgement of receipt is **8 August 2023 @ 16:00pm**.

### 1.2. Late Bids

Bids which are submitted after the closing date and time will not be accepted.

### 1.3. Clarification and Communication

Name:	Alicia Sekoati
Designation:	Senior Buyer
Tel:	011 723 1400
Email:	Alicia.Sekoati@airports.co.za

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- 1.3.1. Request for clarity or information on the bid may only be requested until the **28<sup>th</sup> of July 2023**. Any responses to queries or for clarity sought by a bidder will also be sent to all the other entities which have responded to the Request for Proposal/Bid /Information invitation.
- 1.3.2. Bidders may not contact any ACSA employee on this bid other than those listed above. Contact will only be allowed between the successful bidder and ACSA Business Unit representatives after the acceptance of the letter of award bid. Contact will also only be permissible in the case of pre-existing commercial relations which do not pertain to the subject of this bid.

#### 1.4. **Non-Compulsory Briefing Session**

A non-compulsory briefing session will be held on the following dates at the stipulated venues and time:

**Date:** 6 July 2023

**Time:** 12:00PM

**Venue:** Microsoft Teams

Bidders who are interested in joining the briefing session are required to send their email addresses to [Alicia.Sekoati@airports.co.za](mailto:Alicia.Sekoati@airports.co.za) by **5 July 2023 @ 12:00pm** no excuses. A meeting invitation will be sent to all interested parties who have emailed by the set deadline. We encourage bidders to join this briefing session.

#### 1.5. **Bid Responses**

Bid responses must be strictly prepared and returned in accordance with this bid document. Bidders may be disqualified where they have not materially complied with any of ACSA's requirements in terms of this bid document. Changes to the bidder's submission will NOT be allowed after the closing date of the bid. All bid responses will be regarded as offers unless the bidder indicates otherwise. No bidder or any of its consortium/joint venture members may have an interest in any of the other bidder/joint venture/consortium participating in this bid.

#### 1.6. **Disclaimers**

It must be noted that ACSA reserves its right to:

- 1.6.1. Award the whole or a part of this bid;
- 1.6.2. Split the award of this bid;
- 1.6.3. Negotiate with all or some of the shortlisted bidders;
- 1.6.4. Award the bid to a bidder other than the highest scoring bidder where objective criteria allows;

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- 1.6.5. To reject the lowest acceptable bid received; and/or
- 1.6.6. Cancel this bid.

#### 1.7. **Validity Period**

- 1.7.1. ACSA requires a validity period of hundred and twenty (120) business/working days for this bid. During the validity period the prices which have been quoted by the bidder must remain firm and valid. It is only in exceptional circumstances where ACSA would accommodate a proposal to change the price.

#### 1.8. **Confidentiality of Information**

- 1.8.1. ACSA will not disclose any information disclosed to ACSA through this bid process to a third party or any other bidder without any written approval from the bidder whose information is sought. Furthermore,
- 1.8.2. ACSA will not disclose the names of bidders until the bid process has been finalised.
- 1.8.3. Bidders may not disclose any information given to the bidders as part of this bid process to any third party without the written approval from ACSA. In the event that the bidder requires to consult with third parties on the bid, such third parties must complete confidentiality agreements, which should also be returned to ACSA with the bid.

#### 1.9. **Hot – Line**

ACSA subscribes to fair and just administrative processes. ACSA therefore urges its clients, suppliers and the general public to report any fraud or corruption to:

Airports Company South Africa TIP-OFFS ANONYMOUS

Free Call: 0800 00 80 80 or 086 726 1681

Email: [office@thehotline.co.za](mailto:office@thehotline.co.za)

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## SECTION 2: BACKGROUND, PURPOSE, AND SCOPE OF WORK

### 2.1 Background and Purpose of this Bid

Airports Company South Africa SOC Ltd (the Company) owns and manages nine South African airports. The Company is involved in equity investments abroad and provides technical advisory and consultancy services to other airports nationally and worldwide. Our majority shareholder is the South African Government (74.6%). In line with the government's objectives, we focus on creating sustainable value that positively impacts our business, our people and society, and our environment. These elements are the core tenets of our Sustainability Framework.

The company has the South African Government through the Department of Transport as a major shareholder and thus regarded as a state-owned company (SOC) in terms of the Public Finance Management Act (PFMA). The company is legally and financially autonomous and operates under commercial law.

ACSA is focused on creating and operating world-class airports measuring up to international standards. Numerous international awards won by certain of its airports over the years confirm that the Company has largely succeeded in this aim. This is also shown in the latest ratings for example, O.R. Tambo, Cape Town and King Shaka international airports rated first, second and third respectively in the Best Airport ACI-ASQ awards for Africa.

The purpose of this tender is to seek suitably qualified bidders to supply and deliver tractors and grass cutting slashers for ACSA Airports over a period of 60 months on an Adhoc required basis. This tender will be awarded to a successful bidder based on meeting the technical requirements as specified in the scope of work below.

### 2.2 Scope of work

The scope of work for this tender is to obtain competitive bids for the supply and delivery of tractors and grass cutting slashers for ACSA Airports.

The minimum specifications for the tractor are listed below:

- a) Supply of the tractors with implements as per specifications.

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TRACTOR SPECIFICATIONS	
<b>1. Engine capacity</b>	1.1 Minimum 88KW (bidders to quote for the closest to the minimum capacity stated- nothing less than 88KW)
<b>2. Engine Torque</b>	2.1 Must have enough torque to pull slasher supplied as per specifications.
<b>3. Fuel Type</b>	3.1 Diesel
<b>4. Drive train &amp; Transmission</b>	4.1 Min four speed with reverse gear, rear mechanical diff lock, 4WD.
<b>5. Steering</b>	5.1 Power steering
<b>6. Clutch</b>	6.1 Manual gear selection 6.2 PTO for implements
<b>7. Slasher specifications</b>	7.1 2/3 Rotor flex wings Slashers heavy duty 7.2 4 - 6 metre cutting width 7.3 50 mm minimum Cutting height 7.4 Solid tyres 7.5 12 - 16 x heavy duty cutting blades (3/4 per rotor) 7.6 Slip clutch protection 7.7 Heavy duty rotor gearboxes 7.8 Anti-scalp rotor protection dishes 7.9 Floating wings 7.10 Leaf-spring suspension 7.11 Parking jack
<b>8. Cabin</b>	8.1 Enclosed cabin with retractable windows, adjustable driver's seat & air-conditioned.
<b>9. Working lights</b>	9.1 Standard working lights & LED (amber) star bar light mounted on top of enclosed cabin roof + rear working light and swivel flood light mounted on the roof.
<b>10. Operators layout</b>	10.1 Programable Analog control panel, manual selection ergonomic controls for ease of operation.
<b>11. Colour</b>	11.1 Standard as per manufacturer.
<b>12. Signage &amp; branding</b>	12.1 As per ACSA specifications supplied, numbering & company logo on both sides with reflective tape & numbering on roof. <b>SEE APPENDIX B</b>
<b>13. Warranty</b>	13.1 Standard Manufacturer warranty (minimum of 12 months)
<b>14. Accessories required</b>	13.1 Tow bar, 13.2 Fire extinguisher (2.5kg) with mounting bracket inside of cab.
<b>15. Quantity required</b>	15.1 Rate based per tractor (estimated thirteen (13) tractors & thirteen (13) slashers for year one (1) 2023 order).
<b>16. Airports for delivery</b>	16.1 Bram Fischer International Airport (two (2) tractors) 16.2 George Airport (three (3) tractors) 16.3 King Shaka International Airport (two (2) tractors) 16.4 King Phalo Airport (two (2) tractors) 16.5 Kimberly Airport (two (2) tractors) 16.6 OR Tambo International Airport (two (2) tractors)

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	<p><i>The above is estimated airport sites and number of units required for first order placement (2023). ACSA will confirm the specific delivery sites at contracting stage.</i></p> <p><b><u>Other possible sites after year one (1):</u></b></p> <p>16.7 Cape Town International Airport</p> <p>16.8 Upington Airport</p> <p>16.9 Chief Dawid Stuurman International Airport</p>
<b>17. Mandatory requirements</b>	<p>17.1 OEM letter of support/document confirming that maintenance support exists at <b>all</b> the various airport regions where the tractors will be delivered (as per above listed airports). The bidders are required to provide a detailed list of accredited dealers, workshops, or service providers in each of the town or cities where the airports are located, that will assist with aftermarket service (spares supply, warranty &amp; maintenance).</p>
<b>18. Registration &amp; licensing</b>	<p>18.1 The supplier shall register &amp; license the tractors on ACSA's name at the specific registering authority per relevant region/s.</p>
<b>19. On road charges</b>	<p>19.1 Delivery (to airport destination) and Handling (registration &amp; licensing) charges to be included in price.</p>
<b>20. Onsite training</b>	<p>20.1 Once-off introductory operator training for six (6) people per site.</p>
<b>21. Implements</b>	<p>21.1 The tractor offering from the bidders must be adaptable to front load buckets, grass bailers, sprayers, slashers, rakes etc</p>

- b) Supply and fitment of any additional accessories as per specifications.
- c) Supply of slashers as per specification.
- d) Apply signage and branding as per ACSA's specification (as provided).
- e) The Bidder will be expected to process the homologation, registration and licensing of the tractors to be categorised as a specialised vehicles into Airports Company South Africa's (ACSAs) name at the respective regions local traffic authorities.
- f) Pre-delivery inspections and acceptance testing.
- g) Delivery to the specified airports.

#### **Additional Scope**

- a) The bidder must provide a standard manufacturer warranty (minimum of 12 months).
- b) The bidder will be expected to provide basic training to operators and provide operator manuals.
- c) All outsourced costs and accessories, signage and branding requirements must be included in the bid offer.

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**The Bidder must provide these additional insurances:**

Goods in Transit Insurance; against all risks of physical loss or damage while in transit by sea, air, road or rail from country or place of origin anywhere in the world to the site in the Republic of South Africa. The cost for Insurance shall be for the bidders own account.

**Factory/dealer acceptance test**

Each Tractor shall be subjected to an acceptance test program prior to shipment/delivery. The test shall be conducted in the presence of ACSA company representatives, unless otherwise advised in writing by the Company and shall be in accordance with the bidder's quality control programme. The acceptance test shall be conducted for a period of one (1) day or as agreed between the parties.

**1.2 Pricing Schedule**

***SEE APPENDIX A***

Bidders must only price in accordance with the pricing schedule, this will enable ACSA to compare priced offers. Failure to submit a priced offer using the prescribed schedule will make the bid liable for disqualification.

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## SECTION 3: EVALUATION CRITERIA

### 3.1 Evaluation Criteria

- 3.1.1 ACSA will use a pre-determined evaluation criteria when considering received bids. The evaluation criteria will consider Mandatory administrative criteria, Functionality and Price and Preference. During the evaluation of received bids ACSA will make an assessment whether all the bids comply with set minimum requirements and whether all returnable documents/information have been submitted. Bidders which fail to meet minimum requirements, thresholds or have not submitted required mandatory documents will be disqualified from the bid process.
- 3.1.2 The requirements of any given stage must be complied with prior to progression to the next stage. ACSA reserves the right to disqualify bidders without requesting any outstanding document/information.

### 3.2 A staged approach will be used to evaluate bids and the approach will be as follows:

Stage 1	Stage 2	Stage 3	Stage 4	Stage 5	Stage 6	Stage 7
Check if all the documents have been received.	Mandatory Requirements	Evaluate on functionality or the technical aspect of the bid.	Evaluate price and Preference.	Objective Criteria	Post tender negotiations.	Security Vetting (If deemed necessary)

#### 3.2.1 Mandatory Requirements

A list of mandatory returnable documents must be consulted to understand which documents are required at the closing date and time. Further, to the mandatory returnable documents/information ACSA will only consider bidders which have:

1. Accepted the Airports Company South Africa's tender terms and conditions. (Section 5.5)
2. Completed the Bidder's Disclosure (**SBD4**) (Section 5.2)

**Bidders that do not meet all the above requirements will be disqualified and not evaluated further. No Bid will be awarded to any person who is not declared Tax Compliant by the South African Revenue Service (SARS). No award will be made to an entity which is not registered on the CSD (Central Supplier Database) with National Treasury.**

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### 3.2.2 Functionality

The functionality evaluation will be conducted by the Tender Preparation and Evaluation Committee (TPEC) which comprises of various skilled and experienced members from diverse professional disciplines. The evaluation process will be based on functionality criteria. The criteria will be as follows:

#### 3.2.2.1 Functionality Criteria

The functional evaluation will be based on a threshold, where bidders which fail to achieve a minimum of **70 points** on the functional stage will not be considered further in the evaluation. It should be further noted that a minimum qualifying score per criteria must be met as set out in the evaluation criteria. Failure to achieve **any** of the minimum scores would result in disqualification for further consideration even if the overall minimum total score had been achieved.

#	EVALUATION CRITERIA	Minimum	Maximum
1	<p><b>DELIVERY ON SITE FROM PURCHASE ORDER DATE:</b></p> <p><b>More than 8 months = 0 points</b></p> <p><b>More than 6 months to a maximum of 8 months = 30 points</b></p> <p><b>From 4 to 6 months- 40 points</b></p> <p><b>Less than 4 months = 50 points</b></p> <p>Bidders must include a detailed preliminary Scope of Programme indicating each stage from order date to delivery on site. Lead times for each stage to be included (e.g., manufacturing, shipment, delivery to site etc). Bidders that only provide a delivery date and not a detailed scope of programme will be penalised with <b>0 points</b>.</p> <p><b>For illustrative purposes use 01 August 2023 as the purchase order date for an estimated thirteen (13) tractors and thirteen (13) grass cutting slashers for year one (1) of the supply period.</b></p>	<b>30</b>	<b>50</b>

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2	<b>DECLARATION OF COMPLIANCE TO THE TECHNICAL SPECIFICATIONS FOR THE TRACTOR AND GRASS CUTTING SLASHERS (SEE APPENDIX C)</b>  Bidders are required to comply 100% on the specifications of the tractors and grass cutting slashers.  <b>a) Meets 100% compliance =30 points</b> <b>b) Non-compliance= 0 points</b>	30	30
3.	<b>REFERENCES</b>  Provide three (3) relevant signed/stamped client Reference letters [with Client letterhead and contactable (email & contact number) references] from three (3) different companies/clients providing proof that you supplied and delivered tractors within the last 10 years (2013-2023).  <b>ACSA reserves the right to verify the reference letters</b>  <b>a) Less than three (3) relevant reference letters = 0 Points</b> <b>b) Three (3) reference letters =10 Points</b> <b>c) More than three (3) references = 20 Points</b>	10	20
	<b>TOTAL</b>	<b>70</b>	<b>100</b>

### 3.2.3 Price and Preference

This stage of the evaluation process will be based on the PPPFA preference point system. Bidders will be ranked by applying the preferential point scoring *80/20 for bids with the rand value equal to or below R50 million.*

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### Evaluation of Price

A maximum of 80 points is allocated for price based on the following formulae:

$$Ps = 80 \left( 1 - \frac{Pt - P_{min}}{P_{min}} \right)$$

Where:

Ps	=	Points scored for price of tender under consideration
Pt	=	Price of tender under consideration
Pmin	=	Price of lowest acceptable tender

### Evaluation of Preference

ACSA will score specific goals out of 20 in accordance with the PPP Regulations 2022/2023. If a bidder fails to meet the Specific goals as outlined on the table below and to submit proof, the bidder will score zero (0) out of 20. ACSA will not disqualify the bidder. See below Specific goals that must be achieved for this bid:

Specific Goals	Score
	20
51% owned by Black male and Black women and Black youth and People living with disabilities	20
51% owned by Black male or Black women or Black youth or People living with disabilities (at least two of the above designated groups must be achieved)	15
51% owned by Black male or Black women or Black youth or People living with disabilities	10
Less than 51% owned by Black male, Black women, Black youth, People living with disabilities	5
Other	0

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## SECTION 4: RETURNABLE DOCUMENTS

- 4.1 Mandatory Returnable documents ACSA will disqualify from the bid process any bidder that has failed to submit mandatory returnable documents and information. Bidders should therefore ensure that all the mandatory returnable documents and information have been submitted. In order to assist bidders, ACSA has also included a column next to the required mandatory document and information to enable bidders to keep track of whether they have submitted or not. The mandatory documents and information are as follows:

<b>MANDATORY RETURNABLE DOCUMENTS AND INFORMATION</b>	<b>SUBMITTED [Yes or No]</b>
<i>Priced offer (Appendix A)</i>	
<i>Declaration of Interest Form and Politically Exposed Persons</i>	
<i>SBD 4 Bidder's Disclosure Form</i>	
<i>SBD 6.1 Preference Points Claim Form</i>	
<i>SBD 6.2 Declaration for local content and production for PPPFA designated sectors</i>	
<i>Confidentiality and Non-Disclosure Agreement</i>	
<i>Proposal Certification</i>	
<i>Accepted the Airports Company South Africa's tender terms and conditions. (Section 5.5)</i>	
<i>Scope of Programme indicating each stage from order date to delivery on site</i>	
<i>Declaration of compliance to the technical specifications (Appendix C)</i>	
<i>Refence letters</i>	
<i>Draft Service Level Agreement (Appendix D)</i>	

### 4.2 Other Returnable Documents and information

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These types of documents and information are required but are not mandatory or are only mandatory at specific stages of the process. ACSA may request bidders to submit these documents or information after the closing date and time or might already have them on the system. Where a document or information is only mandatory at a specific stage in the process, ACSA may only disqualify a bidder for non-submission at that stage and after reasonable efforts were made to request the document from the bidder. The documents are as follows:

<b>OTHER RETURNABLE DOCUMENTS AND INFORMATION</b>	<b>SUBMITTED [Yes or No]</b>
<i>BEE Certificate and Scorecard or BBBEE QSE/EME Affidavit</i>	
<i>Verifiable medical certificate of report as proof of disability (For preference claims)</i>	
<i>Tax Pin number (ACSA may not award to a bidder whose tax affairs have not been declared to be in orders by SARS)</i>	
<i>Names and identity numbers of Directors, / Trustees / Members / Shareholders and Senior management</i>	
<i>Certificate of Incorporation of the bidding entity showing ownership split</i>	
<i>Central Supplier Database Report (CSD)</i>	
<i>Joint Venture (JV) Agreement (If applicable)</i>	
<i>3 years audited Financial Statements</i>	
<i>Letter of Good Standing with the Workers Compensation Commissioner</i>	
<i>Cover Letter</i>	
<i>Declaration of Solvency/Liquidation (if applicable)</i>	

#### 4.3 Validity of submitted information

Bidders must ensure that all conditions, documents and information which has been submitted in pursuance to this bid remains valid for the duration of the contract period. In the event where a validity document expires an updated document must be submitted. The duty is on the bidder to provide updated information to ACSA immediately after such information has changed.

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## SECTION 5: RETURNABLE DOCUMENTS

### 5.1 DECLARATION OF INTEREST AND POLITICALLY EXPOSED PERSONS FORM

#### Making a Declaration

Any legal person or persons having a relationship with persons employed by ACSA, including a blood relationship, may submit a bid in terms of this tender document. In view of possible allegations of unfairness, should the resulting bid, or part thereof, be awarded to persons connected with or related to ACSA employees, it is required that the bidder or his/her authorised representative declare his/her position in relation to ACSA employees or any member of the evaluation or adjudication committee which will consider bids.

ACSA requires all bidders to declare that they have not acted in any manner inconsistent with the law, policy, or fairness. Furthermore, ACSA requires bidders to declare if they have Politically Exposed Persons (PEP) also known as Domestic Prominent Influential Persons (DPIP) in their organisation. See below definition of PEP/DPIP.

Politically Exposed Persons or DPIP are individuals who are or have been entrusted with prominent public functions in the country or a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, important political party officials. Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves. PEP status in the following areas shall be declared:

- Current or former senior official in the executive, legislative, administrative, military, or judicial branch of government or foreign government (elected or not)
- A senior official of a major political party or major foreign political party;
- A senior executive of government owned commercial enterprise
- or a foreign government owned commercial enterprise, being a corporation, business or other entity formed by or for the benefit of any such individual;
- A related and or inter-related immediate member of such individual; meaning spouse, parents, siblings, children, and spouse's parents or siblings etc

#### 5.1.1 All bidders must complete a declaration of interest form below:

Full name of the bidder or representative of  
the bidding entity

Identity Number

Position held in the bidding entity

Registration number of the bidding entity

Tax Reference number of the bidding entity

VAT Registration number of the bidding entity

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I/We certify that there is / no PEP/DPIP conflict of interest/ no relationship between the bidding entity or any of its shareholders / directors / owner / member / partner/ senior management with any ACSA employee or official.

Where a relationship or PEP/DPIP conflict of interest exists, please provide details of the ACSA employee or official and the extent of the relationship below:

---



---



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### PEP/DPIP Declaration

DPIP/PEP Declaration for self/family member or close associate:

Nature of Political Exposure	Term of the office	Description of activities relating to political exposure

Full Names of Directors / Trustees / Members / Shareholders/ Senior Management of the bidding entity

Full Name	Identity Number	Personal Income Tax Reference Number

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5.1.2.I/We declare that we have not acted in any manner which promotes unfairness, contravenes any law or is against public morals. We further certify that we will in full compliance of this tender terms and conditions as well as ACSA policies in the event that we are successful in this tender.

**Declaration:**

I/We the undersigned \_\_\_\_\_ (Name) hereby certify that the information furnished in this tender document is true and correct. We further certify that we understand that where it is found that we have made a false declaration or statement in this tender, ACSA may disqualify our bid or terminate a contract we may have with ACSA where we are successful in this tender.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Position

\_\_\_\_\_  
Name of bidder

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## 5. 2 BIDDER'S DISCLOSURE FORM SBD 4

### 1. PURPOSE OF THE FORM

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

### 2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest<sup>1</sup> in the enterprise, employed by the state? **YES/NO**

2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State institution

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2.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

.....  
 .....

2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract? **YES/NO**

2.3.1 If so, furnish particulars:

.....  
 .....

### 3 DECLARATION

I, the undersigned, (name)..... in submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>2</sup> will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

<sup>2</sup> Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

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- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....	.....
Signature	Date
.....	.....
Position	Name of bidder

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### 5.3 PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022 SBD 6.1

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

**NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022**

#### 1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to invitations to tender:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

#### 1.2 To be completed by the organ of state .

a) The applicable preference point system for this tender is the **80/20** preference point system.

1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals / Preference.

#### 1.4 To be completed by the organ of state:

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	80
SPECIFIC GOALS / PREFERENCE	20
<b>Total points for Price and SPECIFIC GOALS</b>	<b>100</b>

1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for

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specific goals are not claimed.

- 1.6 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

## 2. DEFINITIONS

- (a) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (b) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) **“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- (e) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

## 3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

### 3.1. POINTS AWARDED FOR PRICE

#### 3.1.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

<b>80/20</b>	<b>or</b>	<b>90/10</b>
$Ps = 80 \left( 1 - \frac{Pt - P_{min}}{P_{min}} \right)$	or	$Ps = 90 \left( 1 - \frac{Pt - P_{min}}{P_{min}} \right)$

Where

- Ps = Points scored for price of tender under consideration
- Pt = Price of tender under consideration
- Pmin = Price of lowest acceptable tender

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#### 4. POINTS AWARDED FOR SPECIFIC GOALS

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:
- 4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
  - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,
- then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

**Table 1: Specific goals for the tender and points claimed are indicated per the table below.**

**(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.**

**Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)**

THE SPECIFIC GOALS/PREFERENCE POINT ALLOCATED POINTS IN TERMS OF THIS TENDER	NUMBER OF POINTS ALLOCATED (80/20 SYSTEM) (To be completed by the <b>organ</b> of state)	NUMBER OF POINTS CLAIMED (80/20 SYSTEM) (To be completed by the <b>tenderer</b> )
51% owned by Black male and Black women and Black youth and People living with disabilities	20	
51% owned by Black male or Black women or Black youth or People living with disabilities (at least two of the above designated groups must achieved)	15	
51% owned by Black male or Black women or Black youth or People living with disabilities	10	

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Less than 51% owned by Black male, Black women, Black youth, People living with disabilities	5	
Other	0	

#### DECLARATION WITH REGARD TO COMPANY/FIRM

4.3. Name of company/firm.....

4.4. Company registration number: .....

4.5. TYPE OF COMPANY/ FIRM

- ☐ Partnership/Joint Venture / Consortium
- ☐ One-person business/sole propriety
- ☐ Close corporation
- ☐ Public Company
- ☐ Personal Liability Company
- ☐ (Pty) Limited
- ☐ Non-Profit Company
- ☐ State Owned Company

[TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
  - (a) disqualify the person from the tendering process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;

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- (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution, if deemed necessary.

.....	
<b>SIGNATURE(S) OF TENDERER(S)</b>	
<b>SURNAME AND NAME:</b>	.....
<b>DATE:</b>	.....
<b>ADDRESS:</b>	.....
	.....
	.....
	.....

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#### **5.4 CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

between

**AIRPORTS COMPANY SOUTH AFRICA SOC LIMITED**

(Registration No. 1993/004149/30)

**("Airports Company")**

of

Western Precinct, Aviation Park

O.R. Tambo International Airport

1 Jones Road

Kempton Park

1632

**AND**

**[NAME OF SERVICE PROVIDER]**

(Registration No: \_\_\_\_\_)

("\_\_\_\_\_")

of

[Service Providers Address]

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## 1. **INTERPRETATION**

In this agreement -

- 1.1 "confidential Information" – is information which is confidential to the disclosing party, and includes whether in written, graphic, oral, proprietary, tangible, intangible, electronic or other form, and, -
  - 1.1.1 any information in respect of know-how, formulae, statistics, processes, systems, business methods, marketing, trading and merchandising methods and information, promotional and advertising plans and strategies, pricing, financial plans and models, inventions, long-term plans, research and development data, user or consumer/ customer data and profiles, ideas, computer programmes, drawings and any other information of confidential nature of the disclosing party, in whatever form it may be;
  - 1.1.2 the contractual business and financial arrangements of the disclosing party and others with whom it has business arrangements of whatever nature;
  - 1.1.3 all information peculiar to the business of the disclosing party which is not readily available to a competitor of the disclosing party in the ordinary course of business;
  - 1.1.4 the fact of and content of any discussions between the disclosing party and the receiving party as well as the existence and content of any agreement, which may be concluded between the disclosing party and the receiving party;
  - 1.1.5 all other matters of a confidential nature which relate to the disclosing party's business;
  - 1.1.6 generally, information which is disclosed in circumstances of confidence or would be understood by the parties, exercising reasonable business judgement, to be confidential;
  - 1.1.7 all information of whatsoever nature relating to the disclosing party as contemplated in 2.1 below; but does not include information which -
    - 1.1.8 is or hereafter becomes part of the public domain, otherwise than as a result of a breach or default of the receiving party or of a representative or affiliate of the receiving party;
    - 1.1.9 can be shown to have been lawfully in the possession of the receiving party or its affiliates or consultants prior to its disclosure and is not subject to an existing agreement between the disclosing party and the receiving party;
    - 1.1.10 is acquired by the receiving party independently from a third party who lawfully acquired such information without restriction and who had not previously obtained the confidential information directly or indirectly under a confidentiality obligation from the disclosing party;
    - 1.1.11 is acquired or developed by the receiving party independently of the disclosing party and in circumstances which do not amount to a breach of the provisions of this agreement; is disclosed or released by the receiving party to satisfy an order of a court of competent jurisdiction or to otherwise comply with the provisions of any law or regulation in force at the time or the

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requirements of any recognised stock exchange; provided that, in these circumstances, the receiving party shall inform the disclosing party of the requirement to disclose prior to making the disclosure and provided further that the receiving party will disclose only that portion of the confidential information which it is legally required to so disclose; and the receiving party will use its reasonable endeavours to protect the confidentiality of such information to the widest extent lawfully possible in the circumstances (and shall co-operate with the disclosing party if it elects to contest any such disclosure);

For the purposes of this agreement the party, which discloses confidential information, shall be referred to as “the disclosing party” and the party, which receives the confidential information, shall be referred to as “the receiving party”.

- 1.2 ““affiliate” –of a Party means any person, now or hereafter existing, who directly or indirectly controls, (*holding company*) or is controlled or is under common control of such Party (subsidiary company); a Person “controls” another person if it holds or is beneficially entitled to hold , directly or indirectly, other than by way of security interest only, more than 50% of its voting , income or capital;
- 1.3 “disclosing party” – the party disclosing confidential information in terms of this agreement and being Airports Company;
- 1.4 “receiving party” – the party receiving confidential information in terms of this agreement;
- 1.5 “the parties” – the Airports Company and \_\_\_\_\_.

## 2. **INTRODUCTION**

- 2.1 The parties intend to provide each other with certain information pertaining to their operations and the parties are in the process of discussing certain matters with a view to concluding an agreement (“the potential agreement”), which discussions have required and will require the disclosure to one another of information of a proprietary, secret and confidential nature. Whether or not the parties conclude the potential agreement will not affect the validity of this agreement.
- 2.2 If the confidential information so disclosed is used by the receiving party for any purpose other than that for which its use is authorised in terms of this agreement or is disclosed or disseminated by the

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receiving party to another person or entity which is not a party to this agreement, this may cause the disclosing party to suffer damages and material financial loss.

2.3 This agreement shall also bind the parties, notwithstanding the date of signature hereof, in the event that either party shall have disclosed any confidential information to the other party prior to date of signature hereof.

2.4 The parties wish to record the terms and conditions upon which each shall disclose confidential information to the other, which terms and conditions shall constitute a binding and enforceable agreement between the parties and their agents.

### **3 USE OF CONFIDENTIAL INFORMATION**

Any confidential information disclosed by the disclosing party shall be received and used by the receiving party only for the limited purpose described in 2.1 above and for no other purpose.

### **4 NON-DISCLOSURE**

4.1 THE RECEIVING PARTY undertakes that –

4.1.1 it will treat the disclosing party's confidential information as private and confidential and safeguard it accordingly;

4.1.2 it will not use (except as permitted in 3 above) or disclose or release or copy or reproduce or publish or circulate or reverse or engineer and/or decompile or otherwise transfer, whether directly or indirectly, the confidential information of the disclosing party to any other person or entity; and the receiving party shall take all such steps as may be reasonably necessary to prevent the disclosing party's confidential information falling into the hands of unauthorised persons or entities;

4.1.3 it shall not disclose the confidential information of the disclosing party to any employee, consultant, professional adviser, contractor or sub-contractor or agent of the receiving party (collectively referred to herein as "representative") or an affiliate of the receiving party, nor shall they be given access thereto by the receiving party -

4.1.4 unless it is strictly necessary for the purposes referred to in 2.1 above; and

4.1.5 the receiving party shall have procured that the representative, affiliate or consultant to whom or to which such information is disclosed or made available shall have agreed to be bound by all the terms of this agreement, and, in such event, the receiving party hereby indemnifies the disclosing party

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against any loss, harm or damage which it may suffer as a result of the unauthorised disclosure of confidential information by a representative, affiliate or consultant.

- 4.2 Any documentation or written record or other material containing confidential information (in whatsoever form) which comes into the possession of the receiving party shall itself be deemed to form part of the confidential information of the disclosing party. The receiving party shall, on request, and in any event if the discussions referred to in 2.1 above should not result in an agreement, return to the disclosing party all of its confidential information which is in physical form (including all copies) and shall destroy any other records (including, without limitation, those in machine readable form) as far as they contain the disclosing party's confidential information. The receiving party will, upon written or oral request from the disclosing party and within five (5) business days of the disclosing party's request, provide the disclosing party with written confirmation that all such records have been destroyed.

## 5. **COPIES**

- 5.1 The receiving party may only make such copies of the disclosing party's confidential information as are strictly necessary for the purpose and the disclosures which are not in breach of this agreement and authorised in terms of this agreement. The receiving party shall clearly mark all such copies as "Confidential".
- 5.2 At the written request of the disclosing party, the receiving party shall supply to the disclosing party a list showing, to the extent practical –
- 5.2.1 where copies of the confidential Information are held;
  - 5.2.2 copies that have been made by the receiving party (except where they contain insignificant extracts from or references to confidential information) and where they are held; and
  - 5.2.3 the names and addresses of the persons to whom confidential information has been disclosed and, if applicable, a copy of the confidentiality undertaking signed by such persons complying with the provisions of this agreement.

## 6. **THE USE OF THE COMPANY'S INTELLECTUAL PROPERTY**

- 6.1 The receiving party shall not use any intellectual property of the Company (including trademarks, service marks, logos, slogans, trade names, brand names and other indicia of origin) (collectively, the "**Company IP**") for any reason whatsoever without first obtaining the Company's prior written consent which consent the Company shall be entitled to grant solely at its own discretion.

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- 6.2 If the receiving party requires the use of such Company IP, a request must be sent to the [Alicia.Sekoati@airports.co.za](mailto:Alicia.Sekoati@airports.co.za). Each single request by the same receiving party shall be treated as a new request.
- 6.3 Should the Company provide its consent in terms of clause 6.1 above, the receiving party shall comply with the Company's policies and standards with regard to the use of the Company IP. Such policies and standards shall be communicated to the receiving party at the time the Company grants the consent to the receiving party.
- 6.4 Failure to adhere to the provisions of this clause 6 or the policies, brand requirements and protocols that will be communicated by the Brand Custodians Office to the receiving party, shall result in the penalty equal to the value of 2% (two per cent) of the receiving party's annual turnover in the financial year in which the aforesaid failure occurred.

## 7. **DURATION**

- 7.1 Subject to Clause 2.3 this agreement shall commence or shall be deemed to have commenced on the date of signature of this agreement by the last party to sign the agreement.
- 7.2 This agreement shall remain in force for a period of **5 years** ("the term"), or for a period of one (1) year from the date of the last disclosure of confidential information to the receiving party, whichever is the longer period, whether or not the parties continue to have any relationship for that period of time.

## 8. **TITLE**

- 8.1 All confidential information disclosed by the disclosing party to the receiving party is acknowledged by the receiving party:
- 8.1.1 to be proprietary to the disclosing party; and
- 8.1.2 not to confer any rights to the receiving party of whatever nature in the confidential information.

## 9. **RELATIONSHIP BETWEEN THE PARTIES**

- 9.1 The disclosing party is not obliged, by reason of this agreement, to disclose any of its confidential information to the receiving party or to enter into any further agreement or business relationship with the receiving party. Nothing herein shall imply or create any exclusive relationship between the Parties

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or otherwise restrict either Party from pursuing any business opportunities provided it complies at all times with the non-disclosure obligations set forth herein

- 9.2 The disclosing party retains the sole and exclusive ownership of intellectual property rights to its confidential information and no license or any other interest in such confidential information is granted in terms hereof or by reason of its disclosure.
- 9.3 The termination of the discussions referred to in 2.1 above shall not release the parties from the obligations set out in this agreement.

## 10. **ENFORCEMENT, GOVERNING LAWS AND JURISDICTION**

- 10.1 This agreement shall be governed by and interpreted according to the laws of the Republic of South Africa, without reference to the choice of laws' provisions of the Republic of South Africa. In the event of a conflict between or inconsistency in the laws applicable in the various provinces of the Republic of South Africa, the law as applied and interpreted in the Gauteng Province shall prevail.
- 10.2 The parties irrevocably submit to the exclusive jurisdiction of the High Court of South Africa, Witwatersrand Local Division, in respect of any action or proceeding arising from this agreement.
- 10.3 The parties agree that, in the event of a breach of this agreement, monetary damages would not be an adequate remedy. In the event of a breach or threatened breach of any provisions of this agreement by the receiving party, the disclosing party (and/or its relevant affiliate) shall be entitled to injunctive relief in any court of competent jurisdiction and the receiving party shall reimburse the disclosing party for any costs, claims, demands or liabilities arising directly or indirectly out of a breach. Nothing contained in this agreement shall be construed as prohibiting a party or its affiliate from pursuing any other remedies available to it for a breach or threatened breach.
- 10.4 The failure by the disclosing party to enforce or to require the performance at any time of any of the provisions of this agreement shall not be construed to be a waiver of such provision, and shall not affect either the validity of this agreement or any part hereof or the right of the disclosing party to enforce the provisions of this agreement.

## 11. **DOMICILIUM**

- 11.1 The parties choose as their *domicilium* the addresses indicated in the heading to this agreement for the purposes of giving any notice, the payment of any sum, the serving of any process and for any other purpose arising from this agreement.
- 11.2 Each of the parties shall be entitled from time to time, by written notice to the other, to vary its domicilium to any other address which is not a post office box or poste restante.

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- 11.3 Any notice required or permitted to be given in terms of this agreement shall be valid and effective only if in writing.
- 11.4 Any notice given and any payment made by one party to the other ("the addressee") which:
- 11.4.1 is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved, to have been received by the addressee at the time of delivery;
- 11.4.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved, to have been received by the addressee on the fourth day after the date of posting;
- 11.4.3 is transmitted by facsimile to the addressee's receiving machine shall be presumed, until the contrary is proved, to have been received within one (1) hour of transmission where it is transmitted during normal business hours or, if transmitted outside normal business hours, within one (1) hour of the resumption of normal business hours on the next normal business day.
12. **GENERAL**
- 12.1 No party shall be bound by any representation, warranty, undertaking, promise or the like not recorded in this agreement.
- 12.2 No addition to, variation or agreed cancellation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.
- 12.3 Any indulgence which either party may show to the other in terms of or pursuant to the provisions contained in this agreement shall not constitute a waiver of any of the rights of the party which granted such indulgence.
- 12.4 The parties acknowledge that this agreement and the undertakings given by it in terms hereof are fair and reasonable in regard to their nature, extent and period and go no further than is reasonably necessary to protect the interests of the parties.
- 12.5 The parties hereby confirm that they have entered into this agreement with full and clear understanding of the nature, significance and effect thereof and freely and voluntarily and without duress.
- 12.6 Neither party shall have the right to assign or otherwise transfer any of its rights or obligations under this agreement.
- 12.7 This agreement may be executed in several counterparts that together shall constitute one and the same instrument.
- 12.8 In this agreement, clause headings are for convenience and shall not be used in its interpretation.

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Each clause of this agreement is severable, the one from the other and if any one or more clauses are found to be invalid or unenforceable, that clause shall not affect the balance of the clauses which shall remain in full force and effect.

SIGNED at \_\_\_\_\_ on \_\_\_\_\_ day of \_\_\_\_\_ 202\_\_\_\_\_

\_\_\_\_\_  
**[NAME OF SERVICE PROVIDER]**

the signatory warranting that s/he is duly authorised thereto.

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

**AS WITNESSES**

1. \_\_\_\_\_

2. \_\_\_\_\_

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## 5.5 ACCEPTANCE OF TERMS AND CONDITIONS OF RFP AND BIDDER'S PARTICULARS

TO: Airports Company South Africa SOC Limited (ACSA)

Airports Company South Africa Limited.

Proposal No: **COR7143/2023**

### 1. Bidder's Name and Contract Details

Bidder:	
Physical Address:	
Correspondence to be addressed to:	
Phone numbers:	
Email Address:	
Contact Person:	

### 2. Proposal Certification

We hereby submit a Proposal in respect of the Provision of Tractors over a Period of 60 months at Airports Company South Africa's various airports in accordance with Airports Company South Africa's requirements.

- We acknowledge that Airports Company South Africa's terms and conditions (as amended and mutually agreed between the parties if necessary) shall apply to the agreement with the successful Bidder,

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- We have read, understand and agree to be bound by the content of all the conditions of this bid and documentation provided by Airports Company South Africa in this Request for Proposal.
- We accept that Airports Company South Africa's Bid Adjudication Committee decision is final and binding.
- We acknowledge that the bidder/s, directors, shareholders and employees may be subjected to security vetting by Airport Company South Africa or its agent.
- We certify that all forms of Proposal as required in the Proposal document are included in our submission.
- We certify that all information provided in our Proposal is true, accurate, complete and correct.
- This Proposal is specific to this bid only.
- The undersigned is/are authorized to submit and sign the Proposal that shall be binding on closure of the Proposal submission.
- The Proposal is binding on this Bidder for a period which lapses after *one hundred and twenty (120) days* calculated from the closing date for Proposal submission.

Thus done and signed at		on this the		day of		202
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Signature:	
Name:	

For and behalf of:

Bidding entity name:	
Capacity:	

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**APPENDIX A: PRICING SCHEDULE**

**APPENDIX B: SIGNAGE & BRANDING**

**APPENDIX C: DECLARATION OF COMPLIANCE**

**APPENDIX D: DRAFT SERVICE LEVEL AGREEMENT**

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## APPENDIX A: PRICING SCHEDULE

NB: The bidder is to complete the pricing schedule as per the table provided below. No other pricing proposal and alterations will be considered.

**1. Table 1-Fixed** unit price for Tractors and grass cutting slashers (excluding VAT) for the duration of this agreement.

ITEM NO.	DESCRIPTION	QUANTITY(EACH)	YEAR 1: 2023	YEAR 2: 2024	YEAR 3: 2025	YEAR 4: 2026	YEAR 5: 2027
1	Unit Price for Tractor as per specification	1 x Unit	R	R	R	R	R
2	Grass cutting slasher as per specification	1x Unit	R	R	R	R	R

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3	All accessories and signage costs as per specification	1x tractor	R	R	R	R	R
4	Registration & licensing costs(each)for Tractors	1x tractor	R	R	R	R	R
5	Delivery cost Bram Fischer International Airport	1x tractor	R	R	R	R	R
6	Delivery cost George Airport	1x tractor	R	R	R	R	R
7	Delivery cost King Shaka International Airport	1x tractor	R	R	R	R	R
8	Delivery cost King Phalo Airport	1x tractor	R	R	R	R	R
9	Delivery cost Kimberly Airport	1x tractor	R	R	R	R	R

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10	Delivery cost O.R. Tambo International Airport	1x tractor	R	R	R	R	R
11	Delivery cost Cape Town International Airport	1x tractor	R	R	R	R	R
12	Delivery cost Upington Airport	1x tractor	R	R	R	R	R
13	Delivery cost Chief Dawid Stuurman International Airport	1x tractor	R	R	R	R	R
14	<b>TOTAL PRICE (Excluding 15 % VAT)</b>	<b>Each</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>
15	15 % Value Added Tax	Each	R	R	R	R	R
16	<b>TOTAL PRICE (Including 15 % VAT)</b>	<b>Each</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>

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NOTES:

1. The prices shall be indicated in South African Rand (ZAR) where there is a foreign exchange component for imported goods, it is the bidder's responsibility to include this cost in the total bid offer.
2. The prices shall exclude Value Added Tax (15%).
3. The prices shall include escalation, which shall be an annual increase that is market related.
4. The prices / rates shall be **fixed** for the 5-year supply period.
5. The prices/rates applicable shall be in accordance with the year of order placement.

Bidder's signature: \_\_\_\_\_

Date: \_\_\_\_\_

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## **APPENDIX B: SIGNAGE & BRANDING**

### **Signage requirements for all vehicles and equipment:**

1. The vehicle/equipment shall display signage which includes both prefix and the ACSA airport company logo. Both will be provided to the winning bidder.
2. The prefix shall be displayed in Arial bold font, black or dark blue in colour and 200 mm in height.
3. The company's prefix shall be clearly visible and have a maximum of four (4) alphabets and two (2) numerical characteristics e.g., ACSA 01 etc. The specific numbering will be provided to the winning bidder.
4. The prefix shall be displayed visibly on the front two (2) doors and the roof of the vehicle/equipment.
5. It is recommended that the prefix and logo be situated next to one another on the doors, but this shall be separated. ACSA will confirm requirements with the winning bidder.
6. Signage shall be affixed permanently on all the tractors.
7. SABS approved reflective tape for vehicle marking should be applied to the sides and rear of the tractor.
8. An example of signage requirements is illustrated in the below pictures:

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Airports Company South Africa SOC Ltd Reg No 1993/004149/30 VAT no 4930138393 Board of Directors: Advocate S Nogxina (Chairperson), M Mpofu (Chief Executive Officer), N Zikala-Mvelase, N Nokwe-Macamo, Y Pillay, K Esterhuizen, GA Victor, D Hlatswayo, Dr KH Badimo, F Sefara (Company Secretary)





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**APPENDIX C: DECLARATION OF COMPLIANCE**

TRACTOR SPECIFICATIONS		PLEASE MARK THE APPROPRIATE COLUMN		COMMENT
		YES	NO	
<b>1. Engine capacity</b>	1.1 Minimum 88KW (bidders to quote for the closest to the minimum capacity stated- nothing less than 88KW)			
<b>2. Engine Torque</b>	2.1 Must have enough torque to pull slasher supplied as per specifications.			
<b>3. Fuel Type</b>	3.1 Diesel			
<b>4. Drive train &amp; Transmission</b>	4.1 Min four speed with reverse gear, rear mechanical diff lock, 4WD.			
<b>5. Steering</b>	5.1 Power steering			
<b>6. Clutch</b>	6.1 Manual gear selection			
	6.2 PTO for implements			
	7.1 2/3 Rotor flex wings Slashers heavy duty			
	7.2 4 - 6 metre cutting width			
	7.3 50 mm minimum Cutting height			

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<b>7. Slasher specifications</b>	7.4 Solid tyres			
	7.5 12 - 16 x heavy duty cutting blades (3/4 per rotor)			
	7.6 Slip clutch protection			
	7.7 Heavy duty rotor gearboxes			
	7.8 Anti-scalp rotor protection dishes			
	7.9 Floating wings			
	7.10 Leaf-spring suspension			
	7.11 Parking jack			
<b>8. Cabin</b>	8.1 Enclosed cabin with retractable windows, adjustable driver's seat & air-conditioned.			
<b>9. Working lights</b>	9.1 Standard working lights & LED (amber) star bar light mounted on top of enclosed cabin roof + rear working light and swivel flood light mounted on the roof.			
<b>10. Operators layout</b>	10.1 Programable Analog control panel, manual selection ergonomic controls for ease of operation.			
<b>11. Colour</b>	11.1 Standard as per manufacturer.			
<b>12. Signage &amp; branding</b>	12.1 as per ACSA specifications supplied, numbering & company logo on both sides with reflective tape & numbering on roof. <b>SEE APPENDIX B</b>			
<b>13. Warranty</b>	13.1 Standard Manufacturer warranty (minimum of 12 months)			
<b>14. Accessories required</b>	14.1 Tow bar,			
	14.2 fire extinguisher (2.5kg) with mounting bracket inside of cab.			

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<b>15. Quantity required</b>	15.1 Rate based per tractor (estimated thirteen (13) tractors & thirteen (13) slashers for year one (1) 2023.			
<b>16. Airports for delivery</b>	16.1 Bram Fischer International Airport (two (2) tractors)			
	16.2 George Airport (three (3) tractors)			
	16.3 King Shaka International Airport (two (2) tractors)			
	16.4 King Phalo Airport (two (2) tractors)			
	16.5 Kimberly Airport (two (2) tractors)			
	16.6 OR Tambo International Airport (two (2) tractors)			
	<i>The above is estimated airport sites and number of units required for first order placement (2023). ACSA will confirm the specific delivery sites at contracting stage.</i>			
	<b><u>Other possible sites after year one (1):</u></b>			
	16.7 Cape Town International Airport			
	16.8 Upington Airport			
	16.9 Chief Dawid Stuurman International Airport			
<b>17. Mandatory Requirements</b>	17.1 OEM letter of support/document confirming that maintenance support exists at <b><i>all</i></b> the various airport regions where the tractors will be delivered (as per above listed airports). The bidders are required to provide a detailed list of accredited dealers, workshops, or service providers in each of the town or cities where the airports are			

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	located, that will assist with aftermarket service (spares supply, warranty & maintenance).			
<b>18. Registration &amp; licensing</b>	18.1 The supplier shall register & license the tractors on ACSA's name at the specific registering authority per relevant region/s.			
<b>19. On road charges</b>	19.1 Delivery (to airport destination) and Handling (registration & licensing) charges to be included in price.			
<b>20. Onsite training</b>	20.1 Once-off introductory operator training for six (6) people per site			
<b>21. Implements</b>	21.1 The offering from the bidders must be adaptable to front load buckets, grass bailers, sprayers, slashers, rakes etc			

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NB: The compliance sheet refers to the technical specification as contained in the scope of works.

The bidder acknowledges that the contents completed herein this Compliance of Declaration to the Tractor and grass cutting slasher Specification is true and binding in every respect.

**Name of Bidder** \_\_\_\_\_

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

**APPENDIX D: DRAFT SERVICE LEVEL AGREEMENT**

**SERVICES AGREEMENT**

entered into between

**AIRPORTS COMPANY SOUTH AFRICA SOC LIMITED**

(Registration No. 1993/004149/30)

("the Company")

And

(Registration No: **insert Service Provider Reg No.**)

**("SERVICE PROVIDER")**

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## PREAMBLE

1. All capitalised terms in this preamble shall have the meaning attributed thereto in clause 1 (*Interpretation and Preliminary*) of the Agreement which follows this preamble.
2. It is recorded that –
  - 2.1. The Company wishes to procure from the Service Provider (whose details are set out in Annexure A (Contract Data) hereto) the Services (the exact specifications of which are set out in 0 (Form of Service Specification) hereto), and the Service Provider wishes to render same to the Company; and
  - 2.2. as such, the Parties wish to record the terms and conditions of the provision of the Services in this Agreement. The Service Provider's terms and conditions are expressly excluded from this Agreement.
3. Accordingly, the Parties hereby enter into this Agreement to regulate their relationship as the "*customer*" and the "*service provider*" and matters ancillary thereto.

## WHEREBY IT IS AGREED AS FOLLOWS:

### 1. INTERPRETATION AND PRELIMINARY

The headings to the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears:

- 1.1. words importing:
  - 1.1.1. any one gender include the other two genders;
  - 1.1.2. the singular include the plural and *vice versa*; and
  - 1.1.3. natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;
- 1.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:
  - 1.2.1. "**the Company**" means Airports Company South Africa SOC Limited (Registration Number 1993/004149/30);

- 1.2.2. **"Affiliate"** means in relation to any person; (a) any Entity Controlled, directly or indirectly by that person; (b) any Entity that Controls, directly or indirectly, that person, or (c) any Entity under common Control with that person;
- 1.2.3. **"Agreement"** means this service agreement, as amended, replaced or re-stated from time to time, and the annexures hereto, if any;
- 1.2.4. **"Agreement Interest Rate"** means the publicly quoted prime overdraft rate of interest per annum, from time to time charged by Nedbank Limited, as certified by any manager of such bank, whose appointment and authority it shall not be necessary to prove, calculated daily and compounded monthly in arrears;
- 1.2.5. **"Applicable Law"** means any of the following, from time to time, to the extent it applies to a Party (including, as applicable, Affiliates and subcontractors of a Party), or the Services (including, the performance, delivery, receipt or use of the Services, as applicable and wherever occurring): (a) any statute, regulation, policy, by-law, ordinance or subordinate legislation (including treaties, multinational conventions and the like having the force of law);(b) the common law; (c) any binding court order, judgment or decree; (d) any applicable industry code, policy or standard enforceable by law; or (e) any applicable direction, policy or order that is given by a regulator;
- 1.2.6. **"BBBEE"** means Broad-Based Black Economic Empowerment and refers to use of the term in the context of compliance with the BBBEE Act and all related codes of practice and guidance promulgated under the BBBEE Act;
- 1.2.7. **"BBBEE Act"** means the Broad-Based Black Economic Empowerment Act No. 53 of 2003 (as supplemented, amended, succeeded or replaced from time to time);
- 1.2.8. **"Best Industry Practice"** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced service provider (holding itself out as being an expert in providing such relevant services) seeking in good faith to fully comply with its contractual obligations and complying with all Applicable Laws;
- 1.2.9. **"Business Day"** means a day, other than a Saturday, Sunday, or public holiday in the Republic of South Africa;
- 1.2.10. **"Charges"** means the charges payable by the Company to the Service Provider in accordance with the provisions of clause 11 (*Payment of Charges*) as

consideration for the performance of all of the Services, which charges are set out in **0** (*Details of Charges*) hereto;

- 1.2.11. **"Commercially Reasonable Efforts"** means taking such steps and performing in such a manner as a well managed company would undertake where such company was acting in a determined, prudent, and reasonable manner to achieve the particular result for its own benefit provided always that such steps are within the reasonable control of the Party;
- 1.2.12. **"Completion Date"** means "*Completion Date*" as set out in **Annexure A** (*Customer Data*), being the date on which the operation of this Agreement expires;
- 1.2.13. **"Custom Intellectual Property"** means Intellectual Property that is originally developed under this Agreement, whether by the Subcontractor, a third party under the Subcontractor's direction and control, by both the Subcontractor and such third party, or by any combination of the Subcontractor, the third party and the Company under the Agreement. For purposes of this definition, the phrase "originally developed" shall mean Intellectual Property included in a deliverable that results from services:
  - 1.2.13.1. substantially all of which are performed by the Subcontractor's personnel while such personnel are assigned to the Company account, unless assigned on less than a full time basis and the Subcontractor can reasonably establish that the development work was done during time that the personnel was not assigned to the Company account; or
  - 1.2.13.2. substantially all of which are performed by the Company's personnel, and the Subcontractor's personnel while such Subcontractor's personnel are assigned to the Company account, unless assigned on less than a full time basis and the Subcontractor can reasonably establish that the development work was done during time that the personnel was not assigned to the Company account; or
  - 1.2.13.3. substantially all of which were directly or indirectly funded by the Company;
- 1.2.14. **"Control"** means in relation to an Entity the ability of a person (the **"Controller"**), directly or indirectly, to ensure that the activities and business of an Entity (the **"Controlled Entity"**) are conducted in accordance with the wishes of the Controller, and the Controller shall be deemed to so control the Controlled Entity



if the Controller owns, directly or indirectly, the majority of the issued share capital, members interest or equivalent equity and/or holds, directly or indirectly, the majority of the voting rights in the Controlled Entity or the Controller has the right to receive the majority of the income of that Controlled Entity on any distribution by it of all of its income or the majority of its assets on a winding up and in respect of a Controlled Entity that is a trust, "**Control**" means the ability of the Controller to control the majority of the votes of the trustees or to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries, or such trust operates primarily for the benefit of such person and "**Controlling**" and "**Controlled**" shall be construed accordingly;

- 1.2.15. "**DTI Code**" means the Codes of Good Practice on Black Economic Empowerment, issued under section 9(1) of the BBEE Act (as supplemented, amended, succeeded or replaced from time to time);
- 1.2.16. "**Effective Date**" means "*Effective Date*" as set out in **Annexure A** (*Customer Data*) being the date on which this Agreement commences;
- 1.2.17. "**Entity**" means any association, business, close corporation, company, concern, enterprise, firm, fund, partnership, person, trust, undertaking, voluntary association or other similar entity whether corporate or unincorporate;
- 1.2.18. "**Force Majeure Event**" shall have the meaning ascribed thereto in clause 23.1;
- 1.2.19. "**Indemnified Claim**" shall have the meaning ascribed thereto in clause 20.2;
- 1.2.20. "**Indemnified Party**" shall have the meaning ascribed thereto in clause 20.1;
- 1.2.21. "**Insolvency Event**" means, in relation to the Service Provider, the occurrence of any of the following events or circumstances -
  - 1.2.21.1. an order or declaration is made or a meeting of the directors or shareholders (if any) of the Service Provider is convened to consider the passing of, or a resolution is passed for the administration, custodianship, curatorship, bankruptcy, liquidation, winding-up, any form of compromise, business rescue or dissolution, (and whether provisional or final) of it or its estate;
  - 1.2.21.2. it is unable (or admits inability) to pay its debts generally as they fall due or is (or admits to being) otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its debts or proposes or seeks to make or makes a general assignment or any arrangement or composition with or for the benefit of its

creditors or a moratorium is agreed or declared in respect of or affecting all or a material part of its indebtedness;

- 1.2.21.3. it takes any proceeding or other step with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof which it would otherwise be unable to pay when due) or proposes to take any such step;
- 1.2.21.4. any receiver, administrative receiver, any form of administrator, compulsory manager, curator, trustee in bankruptcy, liquidator, business rescue practitioner or the like (whether provisional or final) is appointed in respect of it or any material part of its assets or it requests any such appointment;
- 1.2.21.5. any act which, if such act was committed by an individual, would be an act of insolvency within the meaning of section 8 of the Insolvency Act No. 24 of 1936 or any equivalent legislation in any jurisdiction to which the Service Provider is subject; or
- 1.2.21.6. an application is made by any affected person or third party for an order placing it under supervision for business rescue proceedings as contemplated in section 131(1) of the Companies Act No. 71 of 2008;

1.2.22. **"Intellectual Property"** means all specifications, operating instructions, compilations, lists, databases, systems, operations, processes, methodologies, technologies, algorithms, techniques, methods, designs, circuit layouts and mask-works, plans, reports, data, works protected under the Copyright Act of 1978, works of authorship, video recordings, audio recordings, photographs, models, samples, substances, trade secrets, formulae, know-how, show-how, confidential information, concepts and ideas of any nature (including of a technical, scientific, engineering, commercial, strategic, financial, marketing or organisational nature), inventions, discoveries, drawings, notes, manuals, documentation, training materials, job aids, trademarks, service marks, logos, slogans, corporate, business and trade names, domain names, trade dress, brand names and other indicia of origin, regardless of whether Intellectual Property Rights actually inhere in any such items, and any other tangible or intangible items in which Intellectual Property Rights may inhere, and includes all Intellectual Property Rights in any of the foregoing set out in this clause 1.2.22;

1.2.23. **"Intellectual Property Rights"** means all intellectual property rights of whatever nature, including: (i) all patents and other patent rights, including divisional and

continuation patents, utility models; (ii) rights in and to inventions, whether patentable or not; (iii) rights in trademarks, service marks, logos, slogans, corporate, business and trade names, trade dress, brand names and other *indicia* of origin; (iv) rights in designs, topography rights, rights in circuit layouts and mask-works; (v) copyright, including all copyright in and to computer programs, moral economic rights of authors and inventors; (vi) rights in internet domain names, reservations for internet domain names, uniform resource locators and corresponding internet sites; (vii) rights in databases and data collections; (viii) know-how, show-how, trade secrets and confidential information, in each case whether or not registered and including applications for the registration, extension, renewal and re-issuance, continuations, continuations in part or divisionals of, any of these and the right to apply for any of the foregoing, all claims for past infringements, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world;

- 1.2.24. **"Parties"** means the Company and the Service Provider and **"Party"** shall mean either of them as the context requires;
- 1.2.25. **"Penalties"** means the penalty applicable against the Service Provider in case of default in its Performance Standard, as set out in **0** (*Service Levels and Penalties*);
- 1.2.26. **"Performance Standards"** means a quantitative or qualitative level of service specified in this Agreement to which the Service Provider's performance under this Agreement must conform, as set out in **0** (*Service Levels and Penalties*);
- 1.2.27. **"PFMA"** means the Public Finance Management Act No.1 of 1999;
- 1.2.28. **"Services"** means the services to be rendered by the Service Provider, as described in a Service Specification Form;
- 1.2.29. **"Service Provider"** means "*Service Provider*" as set out in **Annexure A** (*Contract Data*);
- 1.2.30. **"Service Specification Form"** means a services specification form in the form of **0B** (*Form of Services Specification*) hereto describing in detail the Services to be performed by the Service Provider to the Company;
- 1.2.31. **"Signature Date"** means the date of signature of this Agreement by the Party signing it last in time;

- 1.2.32. **"Special Terms and Conditions Form"** means a special terms and conditions form (in the form of **0** (*Form of Special Terms and Conditions Form*)), attached as an annexure to this Agreement, that materially changes and/or amends any specific terms and conditions set out in this Agreement as at the Signature Date;
- 1.2.33. **"Specifications"** means specifications of the Services as set out in **0** (*Form of Services Specification*);
- 1.2.34. **"Target"** means the threshold or level set for attainment by the Service Provider in relation to the Performance Standard, as set out in **0** (*Service Levels and Penalties*);
- 1.2.35. **"Term"** shall have the meaning ascribed thereto in the postamble to clause 4 (*Commencement and Duration*);
- 1.2.1. **"VAT"** means value-added tax as may be levied in terms of the VAT Act; and
- 1.2.2. **"VAT Act"** means the Value-Added Tax Act, No. 89 of 1991; and
- 1.3. any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such enactment. Any reference to a particular section in an enactment is to that section as at the Signature Date, and as amended or re-enacted from time to time and/or an equivalent measure in an enactment, provided that if as a result of such amendment or re-enactment, the specific requirements of a section referred to in this Agreement are changed, the relevant provision of this Agreement shall be read also as if it had been amended as necessary, without the necessity for an actual amendment;
- 1.4. if any provision in a definition is a substantive provision conferring rights or imposing obligations on either Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.5. when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day is not a Business Day, in which case the last day shall be the next succeeding day which is a Business Day;
- 1.6. references to an **"agreement"** or **"document"** shall be construed as a reference to such agreement or document as the same may have been amended, varied, supplemented or novated in writing at the relevant time in accordance with the requirements of such agreement or document and, if applicable, of this Agreement with respect to amendments;
- 1.7. expressions defined in this Agreement shall bear the same meanings in the Annexure to this Agreement which do not themselves contain their own conflicting definitions;

- 1.8. the use of any expression in this Agreement covering a process available under South African law such as a winding up (without limitation *eiusdem generis*) shall, if any of the Parties is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction;
- 1.9. if any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.10. the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.11. the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;
- 1.12. any reference in this Agreement to a Party shall include a reference to that Party's assigns expressly permitted under this Agreement and, if such party is liquidated, sequestrated or placed under Business Rescue in terms of Chapter 6 of the Act, be applicable also to and binding upon that party's liquidator, trustee or Business Rescue practitioner, as the case may be;
- 1.13. references to "**clause**" and "**Annexure**" are references to the clauses of and the annexure to this Agreement;
- 1.14. the words "**include**", "**including**" and "**in particular**" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s;
- 1.15. the words "**other**" and "**otherwise**" shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible.

## 2. **CONDITION PRECEDENT**

To the extent necessary, the operation of this entire Agreement is subject to the condition precedent that all and any approvals required in terms of the PFMA are obtained by no later than 3 (three) months after the Signature Date (or such earlier or later date as the Company may notify the Service Provider in writing).

3. **APPOINTMENT**

The Company hereby appoints the Service Provider on a non-exclusive basis to provide the Services to the Company, and the Service Provider hereby accepts such appointment on the terms and conditions set out herein.

4. **NO EXCLUSIVITY**

The Service Provider specifically acknowledges and agrees that this Agreement does not establish an exclusive arrangement. Moreover, the Company is under no obligation to offer the Service Provider a minimum number of orders or particular kinds or volumes of the Services and that the Company is entitled to engage any other third party to provide all or any of the Services.

5. **COMMENCEMENT AND DURATION**

This Agreement shall, subject to the fulfilment of the condition precedent contemplated in clause 2 (*Condition Precedent*), be deemed to have commenced on the Effective Date and shall endure until it expires on the Completion Date, unless it is -

5.1. extended by agreement between the Parties in writing no later than **30 (Thirty)** Business Days prior to the Completion Date; or

5.2. terminated earlier by –

5.2.1. reason of the occurrence of Force Majeure Event;

5.2.2. the cancellation of this Agreement by either Party in accordance with the provisions of clause 29 (*Breach*); or

5.2.3. either Party in accordance with the provisions of clause 28 (*Termination*),

(the "**Term**").

6. **RELATIONSHIP OF THE PARTIES**

6.1. The Service Provider, in providing the Services hereunder, is acting as an independent contractor. Neither Party is an agent of the other or has any authority to represent the other as to any matters, except as expressly authorised in this Agreement.

6.2. Nothing contained in this Agreement shall be construed as creating a company, close corporation, joint venture, partnership or association of any kind, the any of the Parties; nor is anything contained in this Agreement to be construed as creating or requiring any continuing relationship or commitment on a Party's or its Affiliates' behalf with regard to the other Party and its Affiliates other than as specifically set out herein.

- 6.3. Unless expressly authorised by this Agreement, neither of the Parties (nor their respective agents) shall have the authority or right, nor shall any Party hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of the other Party.

## 7. **EXCLUSION OF THE SERVICE PROVIDER'S TERMS AND CONDITIONS**

Notwithstanding anything to the contrary contained in this Agreement or any other documentation (including without limitation, the Service Provider's quotations), the Service Provider's terms and conditions are hereby expressly excluded from application in respect of the subject matter herein.

## 8. **SPECIAL TERMS AND CONDITIONS**

- 8.1. The general terms and conditions of this Agreement may be varied in writing at any time and from time to time by agreement between the Parties.
- 8.2. In the event that the Parties so wish to vary all or any of the general terms and conditions of this Agreement as aforesaid, they shall do so by preparing (or causing to be prepared) a Special Terms and Conditions Form (initialled by each of them and attached as an annexure to this Agreement), setting out therein at least the following: (a) additional definition, (b) the terms and conditions of this Agreement sought to be varied; (c) the proposed change and/or amendment; and (d) the effect of such proposed change and/or amendment.
- 8.3. In the event that there is a conflict between the general terms and conditions of this Agreement and those terms and condition provided for in a Special Terms and Conditions Form, the terms and conditions provided for in the Special Terms and Conditions Form shall prevail and take precedence over those contemplated in this Agreement, provided however that the Special Terms and Conditions Form references and specifically overrides the general terms and conditions this Agreement. For purposes of the foregoing, a clause in the Special Terms and Conditions Form shall be deemed to reference and override a clause in this Agreement if it provides that it applies "notwithstanding" such clause.

## 9. **SERVICES**

### 9.1. **Procurement of Services**

- 9.1.1. During the Term, when the Company requires that the Service Provider perform the Services, the Company shall: (a) together with the Service Provider, complete **Annexure A (Contract Data)** hereto; (b) prepare a Service Specification Form describing in detail therein, *inter alia*, the nature, scope and cost of the work to be performed under such Service Specification Form; and (c) prepare and complete a service level and penalties form (in the form of **0 (Form of Service Levels and**

*Penalties*) hereto. All of the foregoing documentation shall only be binding as between the Parties if they are signed by both the Service Provider and the Company.

- 9.1.2. A Service Specification Form shall contain such further terms and conditions (in addition to the terms and condition contemplated herein) as the Company may consider reasonably necessary and specific to the Services contemplated therein.
- 9.1.3. Throughout the Term, the Service Provider shall perform the services, functions and responsibilities described in the Service Specification Form (as well as any services, functions, and responsibilities not described in the Service Specification Form but which reasonably necessary in order for the Services in question to meet the requirements set forth in the Service Specification Form), in accordance with the terms and conditions of this Agreement.
- 9.1.4. Without limiting the generality of the foregoing, the Service Provider specifically acknowledges and agrees that the Company may withdraw any services from the scope of the Services described in the Service Specification Form on 20 (twenty) Business Days' written notice to the Service Provider without incurring any liability to the Service Provider, other than the payment of the Service Provider's Charges for the Services actually and properly rendered prior to the effective date of the aforesaid withdrawal. In such event, there shall be an equitable adjustment to the Service Provider's Charges, and in the event that amounts already paid by the Company to the Service Provider exceed such adjusted Charges, the Service Provider hereby agrees and undertakes to promptly refund such excess amounts to the Company.

## 10. **THE SERVICES AND THE CHARGES**

- 10.1. As consideration for the due, proper and punctual provision of the Services, the Company shall pay the Service Provider the Charges in accordance with the provisions of clause 11 (*Payment of Charges*) below.
- 10.2. The Charges shall include VAT. The Service Provider shall fully comply with all the Company's requirements for invoicing as notified to the Service Provider in writing from time to time.
- 10.3. The Charges are the total amount payable by the Company to the Service Provider in respect of the Services and includes all and any further direct and indirect costs (whether foreseeable or not) that the Service Provider may incur in the provision of the Services, including, but not limited to, transportation, delivery, storage, insurance, all taxes, duties, clearance charges and the like.



## 11. INVOICING AND PAYMENT OF THE CHARGES

- 11.1. On the last day of each month, the Service Provider shall deliver original invoices to the Company in respect of the Services. The invoice must contain the following minimum information and/or be substantiated by the following documentation:
- 11.1.1. amount due in respect of VAT;
  - 11.1.2. the Service Provider's VAT registration number;
  - 11.1.3. such additional information and/or documentation as the Company may reasonably require from time to time;
- 11.2. Payment will take place within 20 (twenty) Business Days after receipt by the Company of a duly prepared original invoice.
- 11.3. All payments shall be made by electronic transfer into the Service Provider's bank account, initially being the account set out in **Annexure A** (*Contract Data*) hereto.
- 11.4. The Company may set off any amounts due and payable from the Service Provider pursuant to the terms of this Agreement against any amounts payable by the Company to the Service Provider on any invoice. If the amounts payable by the Service Provider to the Company exceed the amounts payable by the Company to the Service Provider pursuant to an outstanding invoice under this Agreement, then, at the Company's option, the Service Provider shall either issue a credit note for the net amount which the Company may set off against any other invoices rendered by the Service Provider, or promptly pay the amount to the Company.

## 12. DISPUTED CHARGES

- 12.1. If an invoice is identified by the Company as incorrect, then the Service Provider shall, at the Company's election: (i) issue a corrected invoice; or (ii) issue a credit note to the Company and forthwith refund to the Company the overpayment (if any); or (iii) make a correction on the invoice for the month following the month in which the incorrect invoice was issued. If (ii) or (iii) applies the Service Provider shall calculate the credit note or invoice correction (as the case may be) on the basis that interest calculated at the Agreement Interest Rate shall accrue in favour of the Company for the number of days from the date of the Company's payment to the date of the refund (in the case of (ii) and the date of the payment of the corrected invoice (in the case of (iii)) (assuming a 365 day year). The Company shall not be liable to pay interest on undercharged amounts, if any.
- 12.2. The Company may withhold payment of charges that the Company disputes in good faith (or, if the disputed charges have already been paid, the Company may withhold an equal amount

from a later payment), including disputes in respect of an error in an invoice or an unpaid amount.

- 12.3. If any dispute contemplated in clause 12.2 is resolved or determined in favour of the Service Provider, the Company shall pay any amounts withheld in terms of clause 12.2, with interest calculated at the Agreement Interest Rate for the number of days from the due date of payment to the date of actual payment (assuming a 365 day year), within 20 (twenty) days of final resolution or determination of the said dispute.

### 13. **SERVICE LEVELS AND PENALTIES**

The Service Provider shall provide the Services in accordance with the Performance Standards and the Targets set out in **0** (*Form of Service Levels and Penalties*) hereto. In the event that the provision of the Services falls below the expected Performance Standard and thus does not achieve the Target, the Company shall be entitled to invoke the Penalties as set out in **0** (*Form of Service Levels and Penalties*) hereto. The Penalties invoked shall be applied by way of discounting the Charges payable to the Service Provider in the month in which the default in the Performance Standard occurred. Alternatively, if the Company has paid the Charges in full, the Company may require that the Service Provider issue a credit note in respect of such discounts.

### 14. **INTELLECTUAL PROPERTY**

- 14.1. To the extent that any Intellectual Property is used, created or developed pursuant to the rendering of the Services, the provisions of this clause 14 (*Intellectual Property*) shall apply.
- 14.2. All right, title, and interest (of whatsoever nature and howsoever arising) worldwide, in any Intellectual Property which prior to the Effective Date was: (a) owned by the Service Provider; and (b) used by the Service Provider to provide the Services, shall remain owned by, and vested exclusively in, the Service Provider (the “**Service Provider IP**”).
- 14.3. The Service Provider hereby grants to the Company a perpetual, irrevocable, worldwide, royalty-free, fully paid-up, non-exclusive, transferable and sub-licensable licence to use, reproduce, copy, adapt, maintain, support, modify, customise, enhance, develop, improve and create derivative works of the Service Provider IP, for use by the Company as may be necessary in maintaining continuity of the Services.
- 14.4. Notwithstanding the provisions of clause 14.2, all right, title and interest (of whatsoever nature and howsoever arising) worldwide, in any Intellectual Property which:
- 14.4.1. is owned by the Company as at the Effective Date;
- 14.4.2. is a Custom Intellectual Property; and

- 14.4.3. arises out of any developments, modifications, enhancements or derivative works of the Service Provider IP that are created jointly by the Service Provider and the Company,
- shall be owned by, and vest exclusively in, the Company (the "the Company IP").
- 14.5. The Company hereby grants the Service Provider, for no consideration, a worldwide non-exclusive licence to use the Company IP for the sole and exclusive purpose of providing the Services to the Company in terms of this Agreement for the duration of this Agreement, which licence the Service Provider shall not be entitled to transfer or sub-licence.
- 14.6. Except as otherwise requested or approved by the Company in writing, as of the effective date of any expiration or termination of the Agreement for whatsoever reason, or upon the Company's earlier written notification to the Service Provider, the licence contemplated in clause 14.5 shall forthwith terminate and the Service Provider shall cease all use of the Company IP which was previously authorised in terms of the licence contemplated in clause 14.5 (if and to the extent that the Service Provider was so using the Company IP).
- 14.7. If, and to the extent that, a Party (the "**Holding Party**"), by operation of law, holds or acquires any right, title, or interest anywhere in the world, in any Intellectual Property Rights to which the other Party (the "**Entitled Party**") is, in terms of clause 14.2 or 14.4, entitled, the Holding Party hereby irrevocably and in perpetuity transfers, makes over and assigns to that Entitled Party all such right, title and interest in such Intellectual Property Rights, which transfer, making over and assignment the Entitled Party hereby accepts.
- 14.8. The Service Provider shall not use any of the Company Intellectual Property for any reason whatsoever without first obtaining the Company's prior written consent which consent the Company shall be entitled to grant solely at its own discretion.
- 14.9. If the Service Provider requires the use of such Company Intellectual Property, a request must be sent to the Brand Custodians Office, via email to [brandcustodian@airports.co.za](mailto:brandcustodian@airports.co.za). Each single request by the same Service Provider shall be treated as a new request.
- 14.10. Should the Company provide its consent in terms of clause 14.9 above, the Service Provider shall comply with the Company's policies and standards with regard to the use of the Company Intellectual Property. Such policies and standards shall be communicated to the Service Provider at the time of the grant of the consent by the Company.
- 14.11. Failure to adhere to the provisions of this clause 13 or the policies, brand requirements and protocols shall result in a breach of the Agreement.

14.12. Notwithstanding anything contained in this Agreement and except as otherwise requested or approved by the Service Provider in writing, as of the Termination Date or early termination of this Agreement for whatsoever reason, the consent (if granted) contemplated in this clause 13 shall forthwith terminate and the Company shall cease all use of the Service Provider's IP which was authorised in terms of such consent.

## 15. **WARRANTIES AND REPRESENTATIONS**

15.1. The Service Provider hereby warrants and represents to the Company that, as at the Effective Date:

- 15.1.1. it shall carry out the Services and all its duties and obligations arising in terms of this Agreement in accordance with the Best Industry Practice. Without derogating from the generality of the foregoing, the Service Provider shall assign performance of the Services to personnel having the skills, experience and expertise, capacity and knowledge required to perform the Services;
- 15.1.2. it shall not engage in any activities that would detract from the proper performance of its obligations and duties under this Agreement;
- 15.1.3. it shall use its reasonable endeavours to avoid any material conflict between its interests and those of the Company and, where such conflict is unavoidable, will disclose the details of such conflict to the Company;
- 15.1.4. it has adequate facilities to comply with its obligations hereunder;
- 15.1.5. it has the necessary power and legal capacity to enter into and perform its obligations under this Agreement and all matters contemplated herein;
- 15.1.6. it has taken all necessary corporate and/or internal action to authorise the execution and performance of this Agreement;
- 15.1.7. it has the capacity and power to provide the representations, warranties and undertakings contained in this Agreement;
- 15.1.8. the provisions of this Agreement are and shall remain legally binding on the Service Provider and the obligations imposed on it pursuant to this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their terms;

- 15.1.9. the execution of this Agreement and performance of its obligations hereunder does not and shall not:
- 15.1.9.1. contravene any Applicable Law; or
  - 15.1.9.2. contravene any provision of its constitutional documents; or
  - 15.1.9.3. conflict with, or result in a breach of any of the terms of, or constitute a default under any agreement or other instrument to which it is a party, or any licence or other authorisation to which it is subject, or by which it or any of its property or revenues are bound,
- so as to prevent it from performing its obligations under this Agreement;
- 15.1.10. it shall provide the Services under this Agreement:
- 15.1.10.1. in a cost-effective manner;
  - 15.1.10.2. in a manner which ensures that the Company receives “*value for money*”; and
  - 15.1.10.3. in a manner such that the provision of the Services assists the Company to prevent unauthorised, irregular and fruitless and wasteful expenditure for the Company and assists the Company to prevent the procuring of the Services by the Company being a breach of the PFMA;
- 15.1.11. all information provided by the Service Provider to the Company in relation to this Agreement or the Services shall be accurate in all respect; and
- 15.1.12. upon provision the Services to the Company, the Services shall meet the Specifications.

**16. SUPPORT AND GOOD FAITH**

- 16.1. The Parties undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Agreement.
- 16.2. The Service Provider shall at all times during the continuance of this Agreement observe the principles of good faith towards the Company in the performance of its obligations in terms of this Agreement. This implies, without limiting the generality of the foregoing, that it shall –

- 16.2.1. at all times during the term of this Agreement act reasonably, honestly and in good faith; and
- 16.2.2. perform its obligations arising from this Agreement diligently and with care.

17. **BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

- 17.1. The Service Provider represents and warrants that as at the Effective Date and throughout the duration of this Agreement, it shall be and it shall maintain, a BBBEE compliance level (the "**BBBEE Rating**") of at least the Level Contributor as set out in **Annexure A** (*Contract Data*).
- 17.2. The Service Provider shall, upon receipt of a reasonable written request from the Company, provide the Company with a BBBEE verification certificate issued by a rating agency accredited by the South African National Accreditation Service, reflecting the Service Provider's current black ownership level together with the Service Provider's current BBBEE Rating.
- 17.3. The Service Provider warrants that it has read, made itself fully acquainted with, fully understands the implications of, and, where appropriate, follows and will continue to follow the BBBEE Act and DTI Code.
- 17.4. The Service Provider shall, for the duration of the Agreement:
  - 17.4.1. maintain or improve its BBBEE Rating;
  - 17.4.2. notify the Company in writing within 14 (fourteen) days of any occurrence which significantly affects, will significantly affect, or would be reasonably likely to significantly affect, its BBBEE Rating; and
  - 17.4.3. notify the Company in writing within 30 (thirty) days of the occurrence as to what steps have been and/or will be taken to restore its BBBEE Rating.

18. **TAX COMPLIANCE**

- 18.1. The Service Provider represents and warrants that as of the Signature Date, the Service Provider will remain compliant with all Applicable Laws relating to taxation in South Africa.
- 18.2. The Service Provider shall deliver to the Company on the Signature Date and each anniversary thereof during the term of the Agreement a valid tax clearance certificate issued to the Service Provider for the then-current year. If the Service Provider fails to provide such a certificate, the Company may terminate the Agreement on 30 (thirty) days' notice.

19. **MATERIALITY OF WARRANTIES AND REPRESENTATIONS**

- 19.1. Each of the warranties and representations given by the Service Provider in terms of clause 15 (*Warranties and Representations*) and this clause 19 (*Materiality of Warranties and Representations*) (or elsewhere in this Agreement) shall:
- 19.1.1. be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other word/s in this Agreement;
  - 19.1.2. continue and remain in force notwithstanding the completion of the transactions contemplated in the Agreement; and
  - 19.1.3. be deemed to be material and to be a material representation inducing the Company to enter into this Agreement.
- 19.2. It is recorded and agreed that the Company has entered into this Agreement on the strength of the warranties and undertakings it has received from the Service Provider and on the basis that such warranties and undertaking will, unless otherwise specifically stated, be correct on the Effective Date.
- 19.3. A breach by the Service Provider of any warranty, representation or other provision of clause 15 (*Warranties and Representations*) and this clause 19 (*Materiality of Warranties and Representations*) or of any express or implied warranty or representation contained elsewhere in this Agreement, shall be a material breach of this Agreement which shall confer on the Company the right, in its sole discretion, to utilise any remedy it may have in law or created in this Agreement for the enforcement of the Company's rights, including termination in terms of clause 28 (*Termination*).

20. **INDEMNITY**

- 20.1. Without prejudice to any of the rights of the Company arising from this Agreement, the Service Provider hereby indemnifies and holds the Company and its directors, servants, employees, agents, advisors, representatives, contractors and any other person for whom the Company may be liable in law (each an "**Indemnified Party**") harmless against any and all loss, liability, damage, injury, costs (including attorney-own-client costs), claim, fine, penalty, interest or expense of whatsoever nature or howsoever arising which may be incurred or sustained by, threatened against, or imposed on any Indemnified Party by reason of or pursuant to: (a) the breach by the Service Provider (or any of its employees agents, contractors and/or consultants) of any of the provisions of this Agreement; (b) the breach by the Service Provider (or any of its employees, agents, contractors and/or consultants) of any law or legislation which relates to the Service Provider's obligations in terms of this Agreement; and (c) any claim made against the Company in respect of any liability, loss, damage, injury, cost or

expense sustained by any Indemnified Party or by any third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises as a consequence of a breach or negligent performance or failure or delay in performance by the Service Provider of any of its obligations in terms of the Agreement.

- 20.2. The Indemnified Party shall be deemed to have suffered a loss equivalent to the amount of any loss, liability, damage, injury, cost, claim, fine, penalty, interest or expense against which it is indemnified in terms of clause 20.1 (an "**Indemnified Claim**").
- 20.3. The Indemnified Party shall notify the Service Provider in writing of an Indemnified Claim, and the surrounding facts in respect thereof, as soon as is reasonably possible after the Indemnified Party has become aware of such Indemnified Claim, to enable the Service Provider to take steps to contest it.
- 20.4. The Service Provider shall be entitled within **5 (five)** Business Days of the receipt of written notice under clause 20.3 to elect in writing to contest (which shall include an appeal) an Indemnified Claim in the name of the Indemnified Party and shall be entitled to control the proceedings in regard thereto, provided that the Service Provider indemnifies the Indemnified Party against all and any costs (including attorney and own-client-costs) which may be incurred by or awarded against the Indemnified Party as a consequence of the Service Provider's defence of the Indemnified Claim. The Indemnified Party shall be entitled to require the Service Provider to give reasonable security for the payment of such costs prior to the Service Provider taking any steps to contest the Indemnified Claim. If the Indemnified Party and the Service Provider are unable to agree upon the nature or amount of such security, the amount shall be determined by –
- 20.4.1. any third party agreed upon by the Indemnified Party and the Service Provider within **10 (ten)** Business Days of them failing to agree on the amount of the security; and
- 20.4.2. failing agreement of the identity of the third party referred to in clause 20.4.1, by the Registrar of the South Gauteng High Court, Johannesburg of South Africa in accordance with the uniform rules of the High Court of South Africa as soon as reasonably possible after the period in clause 20.4.1 expires.
- 20.5. The Service Provider shall pay to the Indemnified Party the amount of an Indemnified Claim forthwith after receipt of the notification referred to in clause 20.3 unless the Service Provider contests the Indemnified Claim in terms of clause 20.4, in which case the Service Provider shall pay to the Indemnified Party the amount of the Indemnified Claim forthwith after any final judgement or order is granted against the Indemnified Party, provided that in those circumstances where -



- 20.5.1. an Indemnified Claim is contested and despite such contest the Indemnified Claim is payable in law, the Service Provider shall pay to the Indemnified Party the amount of the Indemnified Claim as soon as it is payable; and
- 20.5.2. the Service Provider does not proceed with the contest of the Indemnified Claim in a diligent manner, the Indemnified Party shall be entitled to require the Service Provider to pay the amount of the Indemnified Claim in question in trust to the Company's attorneys, pending the outcome of the contest or the Indemnified Party shall be entitled to require the Service Provider to give proper and adequate security therefore, and in that event the provisions of clause 20.4 shall apply *mutatis mutandis*.
- 20.6. Save as expressly provided in this clause 20 (*Indemnity*), the Indemnified Party will not be obliged to procure that the Service Provider contests an Indemnified Claim.
- 20.7. This clause 20 (*Indemnity*) constitutes a *stipulatio alteri* in favour of each Indemnified Party, which shall be capable of acceptance by any one or more of them at any time.

## 21. AUDITS

### 21.1. Audit Rights

- 21.1.1. The Service Provider will maintain a complete audit trail of all financial and non-financial transactions resulting from this Agreement as reasonably necessary to give effect to the provisions of this clause 21 (*Audits*). The Service Provider will allow the Company, its auditors (including internal audit staff and external auditors), inspectors and regulators (collectively, the "**Auditors**") access at all reasonable times to any facility or part of a facility at which either the Service Provider or any of the Service Provider's subcontractors is providing the Services. The Service Provider will also allow Auditors access at all reasonable times to the Service Provider's personnel and to data and records relating to the Services for the purpose of performing audits and inspections of either the Service Provider or any of the Service Provider's subcontractors to:
- 21.1.1.1. verify the accuracy of the Service Provider's charges and invoices;
- 21.1.1.2. verify the accuracy of payments by or credits from the Service Provider;
- 21.1.1.3. verify the accuracy of price changes to the extent that under the Agreement such changes are determined by reference to the Service Provider's costs and/or margin, or changes to the Service Provider's costs and/or margin;

- 21.1.1.4. examine the Service Provider's performance of its obligations under this Agreement, including, verifying compliance with the Performance Standards;
  - 21.1.1.5. verify compliance generally with the terms of the Agreement;
  - 21.1.1.6. satisfy the requirements of any Applicable Law; and
  - 21.1.1.7. any other audit reasonably required by the Company.
- 21.1.2. The Service Provider will provide Auditors with such assistance and cooperation as they may reasonably require, including installing and operating audit software. The Company will require that the Auditors conduct audits in such a fashion so as not to unreasonably interfere with the Service Provider's normal course of business, and to agree to confidentiality provisions at least as rigorous and protective as those set out in clause 31 (*Confidentiality*).
- 21.1.3. Other than in the case of security audits, or audits triggered by a good faith suspicion of fraud, the Company will provide the Service Provider reasonable notice before conducting audits. Audits will take place during normal business hours, with the exception of security or any other urgent audits, which may take place outside of business hours in the sole discretion of the Company. The Parties will cooperate so as to minimise the impact any audit may have on the Service Provider's provision of the Services.
- 21.1.4. All costs of the Auditors incurred in performing audits under clause 21 (*Audits*) will be borne by the Company.
- 21.1.5. If an audit uncovers overcharges, the Service Provider will promptly refund the overcharge plus interest thereon at the Agreement Interest Rate, from the date of payment of the overcharge until the date the overcharge is refunded by the Service Provider.

21.2. **Audit Follow-up**

- 21.2.1. Following an audit or examination, the Company may at its election conduct, or have its Auditors conduct, an exit conference with the Service Provider to obtain factual concurrence with issues identified in the audit or examination.
- 21.2.2. Within 10 (ten) Business Days following the provision to the Service Provider of the findings of an audit, whether by exit conference or the delivery of the audit report by the Auditors or an audit report by the Service Provider's auditors, the Service Provider will provide the Company with a plan ("**Audit Response Plan**")

to address shortcomings or deficiencies raised in such audit findings attributable to the Service Provider. The Audit Response Plan shall identify the steps that the Service Provider will take to remedy such shortcomings and deficiencies and include a completion date for the plan. With the Company's approval, the Service Provider will implement such Audit Response Plan at the Service Provider's cost and expense. The Service Provider will report monthly to the Company on the status of the implementation of any Audit Response Plan. Failure to complete the Audit Response Plan on or before the completion date included in such Plan shall be a material breach of the Agreement.

### 21.3. **Records Retention**

The Service Provider will maintain and provide the Company access upon request to the records, documents and other information required to meet the Company's audit rights under this Agreement until the later of (i) 3 (three) years after expiration or termination of this Agreement, (ii) all pending matters relating to this Agreement (e.g., disputes) are closed, or (iii) such other period as is required by Applicable Law.

## 22. **SUBCONTRACTING**

The Service Provider shall not subcontract (nor permit anyone to perform) any part of the provision of the Services without the Company's prior written consent. If the Company consents to any subcontracting as aforesaid, then the Service Provider shall be deemed to have guaranteed the due, punctual and proper performance of the subcontractor or third party in question and the Service Provider shall procure that the subcontractor concerned is bound by the provisions of clause 14.4 which shall apply to such subcontractor *mutatis mutandis*.

## 23. **FORCE MAJEURE**

23.1. Neither Party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent: (i) the default or delay is caused, directly or indirectly, by fire, flood, elements of nature, earthquake, rebellion, civil disorder, revolution, or any other cause beyond the reasonable control of that Party; and (ii) the non-performing Party is without fault and the default or delay could not have been prevented by reasonable precautions (a "**Force Majeure Event**"). Subject to clause 23.2, in such event, the non-performing Party is excused from further performance for as long as such circumstances prevail and the Party continues to use its Commercially Reasonable Efforts to recommence performance. Any Party so delayed shall notify the Party to whom performance is due and describe the circumstances causing the delay.

23.2. If a Force Majeure Event substantially prevents or delays provision of the Services to an extent that the Company reasonably believes to be critical at reasonable levels of service for more

than 5 (five) consecutive days (or such longer period as the Company may agree in its sole discretion), then at the Company's option, the Company may:

- 23.2.1. at its expense procure the Services from an alternative source, in which case the Company shall be relieved of its obligation to pay the Service Provider for such Services for so long as the Service Provider's performance is impaired;
  - 23.2.2. terminate the portion of the Agreement affected as of a date specified by the Company and the charges shall be equitably reduced to reflect the termination of the terminated Services; or
  - 23.2.3. if a substantial portion of the Services are affected, terminate the Agreement as of a date specified by the Company in a written notice to the Service Provider.
- 23.3. A termination of the Agreement under clause 23.2 shall not be treated as a termination for convenience. Accordingly, the Company shall not be liable for the payment of any termination fees or have any other liability to the Service Provider for terminating the Agreement.
- 23.4. A performance failure of a contractor or subcontractor of the Service Provider shall not be a Force Majeure Event for the Service Provider unless such contractor's or subcontractor's performance failure was caused by a Force Majeure Event.

## 24. **INSURANCE**

- 24.1. The Service Provider shall, during the term of the Agreement and at its own expense, effect and keep current policies of insurance in accordance with the specifications set out by the Company in writing from time to time (or, in the absence of such specifications, in accordance with good industry practice) in the Service Provider's own name for such value and with such insurer as notified to the Company with the intent that the Service Provider is adequately insured and will be fully indemnified for any cost, claims or damages which may arise.
- 24.2. The Service Provider shall at any time if required by the Company provide proof as to the sufficiency and validity of any insurance obtained by it.
- 24.3. In addition to the above, the Service Provider shall effect the insurances contemplated in this Agreement. Such insurances shall be effected with insurers and its terms approved by the Company.
- 24.4. Any payments received from insurers shall be used for the compensation of the loss or damage. The Service Provider shall, when called upon, submit to the Company:
- 24.4.1. evidence that the insurance described in this clause have been effected; and

24.4.2. copies of the policies for the insurances described in this clause.

24.5. The Service Provider shall not make any material alteration to the terms of any insurance policy without the prior approval of the Company.

24.6. If the Service Provider fails to effect and keep in force any of the insurances it is required to effect and maintain under the Agreement, or fails to provide satisfactory evidence and copies of policies in accordance with this sub-clause, the Company may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage, pay the premiums due and set-off such payment against amounts payable to the Service Provider.

24.7. Nothing in this clause limits the obligations, liabilities or responsibilities of the Service Provider under the Agreement or otherwise. Any amount not insured or not recovered from the insurers or any deductible payable shall be borne by the Service Provider in accordance with these obligations, liabilities or responsibilities.

## 25. **SAFETY PROCEDURES**

25.1. The Service Provider shall:

25.1.1. comply with all the Company's safety, health and security policies and any applicable safety laws and regulations, including, but not limited to, the Occupational Health and Safety Act No. 85 of 1993; and

25.1.2. use reasonable efforts to ensure that the provision of the Services at the Company's premises does not cause any unnecessary obstruction so as to avoid danger to these persons.

25.2. The Service Provider shall consider itself "the Company" for the purposes of the legislation referred to in clause 25.1.1 and shall not consider itself under the supervision or management of the Company with regard to compliance with this legislation.

25.3. The Service Provider shall ensure that all statutory appointments are made and that all appointees fully understand their responsibilities and are trained and competent to execute their duties.

## 26. **DISPUTE RESOLUTION**

26.1. General Dispute Resolution

26.1.1. Any dispute of whatsoever nature which arises out of or in connection with this Agreement, including any dispute as to the validity, existence, enforceability, interpretation, application, implementation, breach, termination or cancellation of

this Agreement or as to the Parties' rights and/or obligations in terms of this Agreement or in connection with any documents furnished by the Parties in terms of this Agreement, shall be submitted to binding arbitration before a single arbitrator in terms of this clause 26 (*Dispute Resolution*) and, except as otherwise provided herein, the rules for the time being as stipulated by the Arbitration Foundation of Southern Africa.

26.1.2. The arbitrator shall, if the dispute is:

26.1.2.1. primarily an accounting matter, be an independent practising accountant of not less than 10 (ten) years' standing as such; or

26.1.2.2. primarily a legal matter, be an attorney of not less than 10 (ten) years' standing as such or a practising senior counsel.

26.1.3. Such arbitrator shall be agreed upon in writing by the Parties; provided that if the Parties do not, within 3 (three) Business Days after the date on which the arbitration is demanded, agree in writing as to the nature of the dispute and the identity of the arbitrator, the arbitrator shall, irrespective of the nature of the dispute, be appointed by the Chairperson of the Arbitration Foundation of Southern Africa or its successor-in-title upon request by either Party to make such appointment after expiry of such 3 (three) Business Days.

26.1.4. The arbitration shall be held as quickly as possible after it is demanded with a view to it being completed within 60 (sixty) Business Days after it has been so demanded.

26.1.5. Promptly after the arbitrator has been appointed, either Party shall be entitled to call upon the arbitrator to fix a date when and where the arbitration proceedings shall be held and to settle the procedure and manner in which the arbitration proceedings shall be held. The arbitration proceedings shall be held in Sandton, Republic of South Africa.

26.1.6. The arbitrator shall allocate the costs of the arbitration in the manner that the arbitrator deems appropriate.

26.1.7. Any order or award that may be made by the arbitrator:

26.1.7.1. absent manifest error or bad faith, shall be final and binding subject to either Party's right of appeal in terms of clause 26.1.8 below;

26.1.7.2. shall be carried into effect; and

- 26.1.7.3. may be made an order of any competent court (including the High Court of South Africa).
- 26.1.8. There shall be a right of appeal against any award of the arbitrator provided that –
- 26.1.8.1. the appeal is noted within 10 (ten) days of the arbitrator's award;
- 26.1.8.2. the appellant delivers the record to the respondent within five (5) days of the record becoming available to the appellant. The relevant provisions of this arbitration clause shall apply *mutatis mutandis* in regard to the appeal;
- 26.1.8.3. the appeal shall be heard before a panel of 3 (three) arbitrators and shall be appointed in terms of the provisions of clause 26.1.3 above;
- 26.1.8.4. the appellant shall provide security for the costs of the appeal within 10 (ten) days of a Pro-Forma Bill of Costs being determined by the Taxing Master of the South Gauteng High Court.
- 26.1.9. This clause 26 (*Dispute Resolution*) is severable from the rest of the Agreement and constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, which consent to arbitration shall survive the Agreement regardless of whether the Agreement is terminated for any reason whatsoever.
- 26.1.10. The arbitrator (or arbitrators in the case of an appeal) shall have the power to give default judgment if any party fails to make submissions on due date and/or fails to appear at the arbitration (or appeal).
- 26.1.11. To the extent that under the terms of this clause 26 (*Dispute Resolution*), a Party is entitled to resort to the High Court of South Africa, each of the Parties hereby irrevocably submits to the jurisdiction of the South Gauteng High Court (the Republic of South Africa) for the institution and hearing of any legal proceedings permitted under this clause 26 (*Dispute Resolution*).
- 26.1.12. Notwithstanding the above or any prior submission of the dispute to arbitration by the Service Provider, the Company, in its sole election, shall be entitled to bring any dispute before the South Gauteng High Court, (the Republic of South Africa) and the Service Provider hereby submits to the jurisdiction of the High Court.
- 26.2. Urgent Relief

Nothing in this clause 26 (*Dispute Resolution*) shall preclude either Party from obtaining urgent or interim relief from the High Court of South Africa or any other competent organs of state

created for the specific purpose of regulating the business or industry activities in which the Parties are engaged.

26.3. Continued Performance

Subject to the Company's right to withhold payment of amounts it disputes in good faith under clause 12 (*Dispute Charges*), and to terminate the Agreement, each Party agrees to continue performing its obligations under this Agreement while any dispute is being resolved.

27. **ANTI-CORRUPTION**

Each party to this agreement shall be bound by the Anti-Corruption Undertakings attached as Annexure F hereto, in so far as such undertakings are applicable to the terms of this Agreement.

28. **TERMINATION**

28.1. Termination for Cause by the Company

28.1.1. The Company may, by giving notice to the Service Provider, terminate this Agreement, in whole or in part, as of a date set out in the notice of termination in the event that the Service Provider:

28.1.1.1. commits a material breach of this Agreement, which breach is not remedied within 30 (thirty) days after notice of breach from the Company to the Service Provider;

28.1.1.2. commits a material breach of this Agreement that is not capable of being remedied within 30 (thirty) days; or

28.1.1.3. commits numerous breaches of this Agreement that collectively constitute a material breach, even if remedied;

28.1.2. The Company may, by giving notice to the Service Provider, terminate this Agreement, in whole or in part, as of a date set out in the notice of termination if any Insolvency Event occurs in relation to the Service Provider.

28.1.3. The Company may terminate this Agreement, by giving notice to the Service Provider, in whole or in part, as of a date set out in the notice of termination in the event that it is advised that the Applicable Laws, as they may be changed, enacted or repealed, prevent the Service Provider from performing its obligations under this Agreement.



- 28.1.4. In the case of a termination of the Agreement in part, the charges payable under this Agreement shall be reduced proportionately to reflect the partial termination of the Agreement.
- 28.1.5. The Company may terminate this Agreement, by giving notice to the Service Provider, if the Service Provider fails to comply with clause 18 (*Tax Compliance*).
- 28.1.6. The Company shall have no liability to the Service Provider with respect to a termination under this clause 28.1.

28.2. Termination for Cause by the Service Provider

- 28.2.1. In the event that the Company fails to pay the Service Provider when undisputed amounts for the Services or amounts which have been finally adjudged to be due for the Services fall due and it fails to make such payment within 90 (ninety) days of the later of notice from the Service Provider of the failure to make such payment or the date that an amount is finally adjudged to be due under the Agreement, then the Service Provider may, by giving notice to the Company terminate this Agreement as of the date set out in the notice of termination.
- 28.2.2. The Service Provider shall have no other right to terminate this Agreement.

28.3. Termination for Convenience

The Company may terminate this Agreement in whole or in part for convenience and without cause at any time by giving the Service Provider at least 60 (sixty) days' prior notice designating the termination date. The Company shall have no liability to the Service Provider with respect to such termination.

28.4. Termination upon Sale, Acquisition, Merger or Change of Control

In the event of a sale, acquisition, merger, or other change of Control of the Service Provider where such Control is acquired, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially all of the assets of the Service Provider in a single or series of related transactions, then, at any time within 180 (one hundred and eighty) days after the last to occur of such events, the Company may terminate this Agreement by giving the Service Provider at least 90 (ninety) days' prior notice and by designating a date upon which such termination shall be effective. The Company shall have no liability to the Service Provider with respect to any such termination.

28.5. Extension of Termination Effective Date

The Company shall have one option to elect not later than 90 (ninety) days (or 30 (thirty) days in the case of a termination for cause) prior to expiration or termination of the Agreement, to require that the Service Provider continue to provide some or all of the Services for a fixed term up to 180 (one hundred and eighty) days following the effective date of expiration or termination of the Agreement on the terms and conditions then in effect.

28.6. Disengagement Assistance

Commencing 6 (six) months prior to expiration of this Agreement, or commencing upon any notice of termination (including notice of a termination by the Service Provider), and continuing through the effective date of expiration (as such effective date may be extended in terms of clause 28.5), or, if applicable, through the effective date of termination (as such effective date may be extended in terms of clause 28.5), and for up to 12 (twelve) months after such date, the Service Provider shall provide to the Company, or at the Company's request to the Service Provider's designate, such termination/expiration assistance as the Company may reasonably request to facilitate the transition of the Services to the Company or its designate and, to the extent applicable, without material interruption or degradation of the Services.

29. **BREACH**

Without derogating from the provisions of clause 27 (*Termination*) above, if any Party breaches any provision or term of this Agreement and fails to remedy such breach within 10 (ten) days of receipt of written notice requiring it to do so then the aggrieved Party shall be entitled, without notice and in addition to any other remedy available to it at law or under this Agreement (including obtaining an interdict but excluding cancellation or termination of this Agreement which remedy shall only be available to the Parties in terms of clause 27 (*Termination*) above) to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved Party's right to claim damages.

30. **NOTICES**

30.1. The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the respective addresses as set out in **Annexure A** (*Contract Data*).

30.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by fax or email.

- 30.3. Any Party may by notice to the other Party change the physical address chosen as its *domicilium citandi et executandi vis-à-vis* that Party to another physical address the relevant jurisdiction or its fax number or its email address, provided that the change shall become effective *vis-à-vis* that addressee on the 10<sup>th</sup> (tenth) Business Day from the receipt of the notice by the addressee.
- 30.4. Any notice to a Party:
- 30.4.1. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or
- 30.4.2. sent by fax to its chosen fax number stipulated in **Annexure A (Contract Data)** shall be deemed to have been received on the date of despatch (unless the contrary is proved), provided that the sender has received a receipt indicating proper transmission; or
- 30.5. Notwithstanding anything to the contrary herein contained a written notice or communication (including by email) actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

## 31. **CONFIDENTIALITY**

- 31.1. Save as provided in this clause 31 (*Confidentiality*), each Party shall, and shall procure that its Affiliate and their respective officers, directors, employees, agents, auditors and advisors shall, treat as confidential all information relating to the other Party or its Affiliates thereof or relating to their respective businesses that is of a confidential nature and which is obtained by that Party in terms of, or arising from the implementation of this Agreement, which may become known to it by virtue of being a Party, and shall not reveal, disclose or authorise the disclosure of any such information to any third party or use such information for its own purpose or for any purposes other than those related to the implementation of this Agreement.
- 31.2. The obligations of confidentiality in clause 31.1 shall not apply in respect of the disclosure or use of such information in the following circumstances:
- 31.2.1. in respect of any information which is previously known by such Party (other than as a result of any breach or default by any Party or other person of any agreement by which such Confidential Information was obtained by such Party);
- 31.2.2. in respect of any information which is in the public domain (other than as a result of any breach or default by either Party);

- 31.2.3. any disclosure to either Party's professional advisors, executive staff, board of directors or similar governing body who (i) such Party believes have a need to know such information, and (ii) are notified of the confidential nature of such information and are bound by a general duty of confidentiality in respect thereof materially similar to that set out herein;
  - 31.2.4. any disclosure required by law or by any court of competent jurisdiction or by any regulatory authority or by the rules or regulations of any stock exchange;
  - 31.2.5. any disclosure made by a Party made in accordance with that Party's pursuit of any legal remedy;
  - 31.2.6. any disclosure by a Party to its shareholders or members pursuant to any reporting obligations that Party may have to its shareholders or members, provided that each such shareholder or member is notified of the confidential nature of such information and is bound by a general duty of confidentiality in respect thereof materially similar to that set out herein;
- 31.3. In the event that a Party is required to disclose confidential information as contemplated in clause 31.2.4, such Party will:
- 31.3.1. advise any Party/ies in respect of whom such information relates (the "**Relevant Party/ies**") in writing prior to disclosure, if possible;
  - 31.3.2. take such steps to limit the disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;
  - 31.3.3. afford the Relevant Party/ies a reasonable opportunity, if possible, to intervene in the proceedings;
  - 31.3.4. comply with the Relevant Party/ies' reasonable requests as to the manner and terms of such disclosure; and
  - 31.3.5. notify the Relevant Party/ies of the recipient of, and the form and extent of, any such disclosure or announcement immediately after it was made.
- 31.4. Either Party may, by notice in writing, be entitled to demand the prompt return of the whole or any part of any confidential information supplied by it to the other Party, and each Party hereby undertakes to comply promptly with any such demand.

32. **GOVERNING LAWS**

This Agreement is governed by, and all disputes, claims, controversies, or disagreements of whatever nature arising out of or in connection with this Agreement, including any question regarding its existence, validity, interpretation, termination or enforceability, shall be resolved in accordance with the laws of South Africa.

33. **WHOLE AGREEMENT, NO AMENDMENT**

33.1. This Agreement sets out the entire understanding of the Parties with respect to the subject matter hereof, and supersedes and replaces any other agreements and/or discussions, written or oral.

33.2. No amendment or consensual cancellation of this Agreement or any provision or term thereof or of any agreement or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver, or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any agreement or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver, relaxation or suspension, signed by the Party granting such extension, waiver, relaxation or suspension). Any such extension, waiver, relaxation or suspension which is so given or made shall be construed strictly as relating only to the matter in respect whereof it was made or given.

33.3. No oral *pactum de non petendo* shall be of any force or effect.

33.4. No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.

33.5. To the extent permissible under Applicable Law, no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

34. **SEVERABILITY**

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of

this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

35. **STIPULATIO ALTERI**

No part of this Agreement shall constitute a *stipulatio alteri* in favour of any person who is not a Party to the Agreement unless the provision in question expressly provides that it does constitute a *stipulatio alteri*.

36. **NO CESSION AND ASSIGNMENT**

36.1. Other than in accordance with clause 36.2, or as otherwise expressly provided in this Agreement which expressly states that cession, delegation or assignment may take place, no Party shall be entitled to cede, assign, transfer or delegate ("**Transfer**") all or any of its rights, obligations and/or interest in, under or in terms of this Agreement to any third party without the prior written consent of the other Party (which consent shall not be unreasonably withheld).

36.2. The Company shall be entitled, in its sole and absolute discretion, to Transfer all (but not some) of its rights, obligations and/or interest in, under or in terms of this Agreement to an Affiliate of the Company and shall notify the Service Provider in writing of such Transfer at least 10 (ten) Business Days prior to such Transfer taking place.

37. **EXECUTION IN COUNTERPARTS**

This Agreement may be executed in two counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same agreement as at the date of signature of the Party that signs its counterpart last in time.

38. **PROTECTION OF PERSONAL INFORMATION**

38.1 For the purposes of this clause, the words "data subject", "personal information", "process", "responsible party" and "Regulator" have the meanings given to them in the Protection of Personal Information Act, 2013 (POPI).

38.2 Both Parties will comply with their obligations under POPI in relation to personal information for which they are the responsible party.

38.3 The Service Provider must only process personal information of the Company and third parties on behalf of the Company, with the Company's knowledge or authorisation, treat such information which comes to their knowledge as confidential and must not disclose it unless required by law or in the course of the proper performance of the Service Provider's duties. The Service Provider must comply with the responsible party's obligations in clause 19 of POPI.

38.4 The Service Provider must notify the Company immediately where there are reasonable grounds to believe that personal information has been accessed or acquired by any unauthorised person (Data Breach) and must assist the Company, at its own cost: a) with any investigation or notice to the Regulator or data subjects that the Company may make in relation to a Data Breach; and b) in responding to any directions by the Regulator to publicise the Data Breach, including assisting the Company to make public announcements if required.

38.5 The Service Provider indemnifies the Company against any civil or criminal action or administrative fine or other penalty or loss as a result of the Service Provider's breach of this clause.

39. **COSTS**

39.1 Each of the Parties shall bear its own legal and other costs, charges and expenses in connection with the negotiation and execution of this Agreement.

39.2 The Service Provider shall be responsible for all costs, charges and expenses of whatsoever nature which may be incurred by the Company in enforcing its rights in terms hereof, including, without limitation, legal costs on the scale as between attorney and own client and collection commission.

**SIGNED** by the Parties and witnesses on the following dates and at the following places respectively:

FOR **AIRPORTS COMPANY SOUTH AFRICA SOC LIMITED**

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness \_\_\_\_\_

Witness \_\_\_\_\_

FOR **SERVICE PROVIDER**

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness \_\_\_\_\_

Witness \_\_\_\_\_

**Annexure A – CONTRACT DATA**

SERVICE PROVIDER'S DETAILS	
Service Provider's Name	
Service Provider's Registration Number	
Service Provider's Domicilium Details	Physical Address:
	Telephone Number: Fax Number:
	Attention:
Service Provider's VAT Registration Number	
Service Provider's BBBEE Level	
Tender Reference Number	
SERVICE PROVIDER'S BANKING DETAILS	
Bank	
Branch	
Branch Code	
Account Holder	
Account No.	
Reference	<b>Your company name</b>
MATERIAL DATES	
Effective Date	
Completion Date	
the Company'S DETAILS	
the Company's Domicilium Details	Physical Address:
	Telefax Number:
	Attention:



## ANNEXURE B– FORM OF SERVICES SPECIFICATIONS

### 1.TECHNICAL SPECIFICATION

- 1.1 The Service Provider shall supply the Company with the following tractors and associated equipment required by the Company for the purpose of its business in the republic of South Africa, subject to the terms and conditions of the Agreement;
- 1.1.1 The TBC Tractors shall conform to the tractor technical specifications , as detailed in the below table..
- 1.1.2 The grass cutting slashers shall conform to the slasher technical specifications, as detailed in the below table.

TRACTOR SPECIFICATIONS	
1. Engine capacity	1.3 Minimum 88KW (bidders to quote for the closest to the minimum capacity stated- nothing less than 88KW)
2. Engine Torque	2.1 Must have enough torque to pull slasher supplied as per specifications.
3. Fuel Type	3.1 Diesel
4. Drive train & Transmission	4.1 Min four speed with reverse gear, rear mechanical diff lock,4WD.
5. Steering	5.1 Power steering
6. Clutch	6.1 Manual gear selection 6.2 PTO for implements
7. Slasher specifications	7.1 2/3 Rotor flex wings Slashers heavy duty 7.2 4 - 6 metre cutting width 7.3 50 mm minimum Cutting height 7.4 Solid tyres 7.5 12 - 16 x heavy duty cutting blades (3/4 per rotor) 7.6 Slip clutch protection 7.7 Heavy duty rotor gearboxes 7.8 Anti-scalp rotor protection dishes 7.9 Floating wings 7.10 Leaf-spring suspension 7.11 Parking jack
8. Cabin	8.1 Enclosed cabin with retractable windows, adjustable driver's seat & air-conditioned.
9. Working lights	9.1 Standard working lights & LED (amber) star bar light mounted on top of enclosed cabin roof + rear working light and swivel flood light mounted on the roof.
10. Operators layout	10.1 Programable Analog control panel, manual selection ergonomic controls for ease of operation.
11. Colour	11.1 Standard as per manufacturer.
12. Signage & branding	12.1 As per ACSA specifications supplied, numbering & company logo on both sides with reflective tape & numbering on roof. <b>SEE APPENDIX B</b>
13. Warranty	13.1 Standard Manufacturer warranty (minimum of 12 months)
14. Accessories required	13.1 Tow bar, 13.2 Fire extinguisher (2.5kg) with mounting bracket inside of cab.
15. Quantity required	15.1 Rate based per tractor (estimated thirteen (13) tractors & thirteen (13) slashers for year one (1) 2023 order).
16. Airports for delivery	16.1 Bram Fischer International Airport (two (2) tractors)

	16.2 George Airport (three (3) tractors) 16.3 King Shaka International Airport (two (2) tractors) 16.4 King Phalo Airport (two (2) tractors) 16.5 Kimberly Airport (two (2) tractors) 16.6 OR Tambo International Airport (two (2) tractors)  <i>The above is estimated airport sites and number of units required for first order placement (2023). ACSA will confirm the specific delivery sites at contracting stage.</i>  <b><u>Other possible sites after year one (1):</u></b>  16.7 Cape Town International Airport 16.8 Upington Airport 16.9 Chief Dawid Stuurman International Airport
<b>17. Mandatory requirements</b>	17.1 OEM letter of support/document confirming that maintenance support exists at <b><i>all</i></b> the various airport regions where the tractors will be delivered (as per above listed airports). The bidders are required to provide a detailed list of accredited dealers, workshops, or service providers in each of the town or cities where the airports are located, that will assist with aftermarket service (spares supply, warranty & maintenance).
<b>18. Registration &amp; licensing</b>	18.1 The supplier shall register & license the tractors on ACSA's name at the specific registering authority per relevant region/s.
<b>19. On road charges</b>	19.1 Delivery (to airport destination) and Handling (registration & licensing) charges to be included in price.
<b>20. Onsite training</b>	20.1 Once-off introductory operator training for six (6) people per site.
<b>21. Implements</b>	21.1 The tractor offering from the bidders must be adaptable to front load buckets, grass bailers, sprayers, slashers, rakes etc

## 1.2 SCOPE OF WORK

- (a) Supply of the tractors and slashers as per specifications.
- (b) Supply and fitment of any additional accessories as per specifications.
- (c) Inclusion of the Original Equipment Manufacturer (OEM) warranties (minimum of 12 months).
- (d) Apply signage and branding as per ACSA's specification.
- (e) The Bidder will be expected to process the homologation, registration and licensing of the tractors to be categorised as a specialised vehicle into Airports Company South Africa's (ACSAs) name at the respective region/s local traffic authority.
- (f) The bidder will be expected to train operators and provide operator manuals.
- (g) All outsourced costs and accessories, signage and branding requirements are included in the contract price.
- (h) Pre-delivery inspections and acceptance testing.
- (i) Delivery to the specific airport sites as per order placement.

## 2. PROGRAMME AND DELIVERY

### 2.1 PROGRAMME OF WORK

The Service Provider shall submit to the Company, a detailed delivery scheduled within seven (7) days after the receipt of the Purchase Order.

The programme for the execution of the work shall be done in accordance with the delivery schedule.

The Service Provider shall supply the Company with written periodic progress reports, unless otherwise requested by the Company, giving full details of the work carried out in connection with the execution of the Agreement. Such reports shall contain such additional information as requested by the Company.

## **2.2 DELIVERY PERIOD**

The time scales for the delivery of the supplies shall be calculated with effect from the date of the Purchase Order and shall not exceed eight (8) months of the delivery programme.

## **2.3 DELIVERY**

2.3.1 The tractors and associated equipment shall be delivered to the Company's nominated airport sites by no later than TBC.

2.3.2 Forthwith after the delivery of each tractor and associated equipment to the Company nominated airport, the Service Provider shall:

2.3.2.1 Carry out a pre-delivery inspection including the following;

- (a) Quality of welding;
- (b) Quality of paintwork;
- (c) Quality of hydraulic hoses and fittings;
- (d) Torque settings on all bolts and nuts;
- (e) Tightness of all hydraulic fittings and clamps;
- (f) All lubrication points operational and excisable;
- (g) All shafts for straightness and alignment;
- (h) All lubricant and coolant levels;
- (i) Functionality and operation of all controls and display;
- (j) Fitment and functionality check of all accessories required as per technical specification; and
- (k) Ensure all control levers and functional controls are in sound working order ready for operation.

2.3.2.2 Clean and polish the vehicle after the pre-delivery inspection;

2.3.2.3 Issue the Company with the following certificates / licenses / permits:

- (i) Letter from South African Bureau of Standards where applicable;
- (ii) Roadworthy Certificate;
- (iii) All Registration and licensing documentation;
- (iv) Operator instruction and vehicle manuals applicable to tractors and equipment supplied.

2.3.2.4 Carry out the following services:

- (i) Fitment of marker plates;
- (ii) Fitment of number plates and
- (iii) Carry out and install all agreed after-market fitments/accessories

## **3. COMMENCEMENT AND PROGRESS OF WORK**

The Service Provider shall proceed with the activities required for the execution of the order at such a rate as to ensure the completion of each part of the order on or before the contract delivery date and/or delivery programme.

4. **FACTORY/DEALER ACCEPTANCE TEST**

Each Tractor shall be subjected to an acceptance test program prior to shipment/delivery. The test shall be conducted in the presence of ACSA company representatives, unless otherwise advised in writing by the company and shall be in accordance with the bidder's quality control programme. The acceptance test shall be conducted for a period of one (1) day or as agreed between the parties.

5. **ON SITE OPERATIONAL TRAINING**

- 5.1 Basic introductory and familiarisation training shall be conducted at the company premises and be performed by the Original equipment manufacturer (OEM)/ factory/dealer qualified person.
- 5.2 The basic introductory and familiarisation training shall be held at the Company's nominated airport where the tractors will be delivered.
- 5.3 The training shall be for a duration as agreed by the parties.

6. **INSURANCE**

Goods in Transit Insurance against all risks of physical loss or damage while in transit by sea, air, road or rail from country or place of origin anywhere in the world to the sites as nominated by the company in the Republic of South Africa. The cost for insurance shall be for the bidders own account.

7. **OWNERSHIP AND RISK**

Notwithstanding anything to the contrary contained in the Agreement, ownership and risk of all loss, damage and/or destruction in and to Tractors and associated equipment under the Agreement, shall remain vested in the Service Provider until it has been delivered to the Company's nominated airport/s and accepted by the Company under the Agreement, where after ownership and risk shall pass to the Company.

8. **DEVIATIONS AND SUBSTITUTIONS BY THE SERVICE PROVIDER**

The Service Provider shall adhere strictly to the provisions of this Contract and shall not deviate therefrom without prior written approval from the Company.

9. **EXPORT LICENCE**

Subject to the provisions of clause 23, the Company is not liable for any losses suffered or expenditure incurred by the Service Provider or any other person (including losses suffered or expenditure incurred in respect of the manufacture, supply, transport or delivery of the tractors and associated equipment) due to government of the country of origin of the supplies on the strength of existing legislation failing or refused to grant an export licence or cancelling an export licence that has been issued. In such an event, it will be regarded as a failure by the Service Provider to perform in terms of clause 29.

10. **IMPORT REGULATIONS TO BE COMPLIED WITH**

- 10.1 The Service Provider shall ensure that the provisions of any law or regulation prohibiting the importation into South Africa of certain insects, fungi, diseases or pests by way of certain types of packing materials and containers are complied with and that any guarantee or certificate which may be required in terms of such law or regulation be obtained and provided at the Service Providers expense.
- 10.2 Where the Service Provider fails to comply with the provisions of the law or regulation and, as a result, thereof the consignments are seized, destroyed or delayed at the port of entry or elsewhere in South Africa, the Service Provider shall be liable for any delays, demurrage charges or any other loss arising out of the such seizure, destructions or delays.

11. **SUPPLIES TO BE IMPORTED IN THE NAME OF THE SERVICE PROVIDER**

Where the Tractors and associated equipment are to be imported, shall be imported in the name of the Service Provider and recognised by him to the delivery address stated in the Agreement.

12. **SPARE PARTS**

The Service Provider shall guarantee the availability of spare parts for the tractors and associated equipment for a minimum period of ten (10) years after the date of delivery.

13. **WARRANTEES OF TRACTORS AND ASSOCIATED EQUIPMENT**

13.1 The Service Provider warrants that the material and workmanship and the design of the Tractors and associated equipment supplied and guarantees that the Tractors and associated equipment and any component or parts thereof, or the work, shall for a period of:

(a) TBC months from the date of delivery.

13.2 After the date of delivery and shall be free from any material defects if used or applied under normal working conditions or stored under normal storage conditions;

13.3 The warranty in clause 13.1 shall continue and remain in force notwithstanding the termination of this Agreement.

13.4 The warranty in clause 13.1 shall also apply to repairs or replacements of the supplies, any components or parts thereof, or the rectification of work. The guarantee and warrantee in respect of repaired or replaced supplies, components or parts or work shall suspend on the date of reporting such defects by the Company. In addition, shall recommence on the date of acceptance of such repairs or replacement by or on behalf of the Company and shall only cover the remaining period of the original guarantee period.

13.5 It is hereby recorded that the true intention of the Company and the Service Provider is that the Company shall enjoy trouble-free use of the supplies or the work for at least the period stated in clause 13.1.

13.6 Should any defect occur, the Company shall inform the Service Provider thereof in writing, stating the nature of the defect. Suppose the Service Provider fails to remedy the defect within fourteen (14) days (including Saturdays, Sundays and Public Holidays) or to come to an agreement with the Company on the matter within the said period. In that case, the Company shall, without prejudice to any rights it may have, be entitled to rectify the defect itself or have the defect remedied by a third party at the expense of the Service Provider.

13.7 The obligation of the Service Provider under the warranty shall cover the delivery to and collection from the point of delivery of supplies required in the replacement or repair of defective supplies. Where components or parts are to be replaced, the guarantee shall include their installation.

13.8 In no event shall the terms of this guarantee by the Service Provider extend to consequential loss or damage, and the limit of damages payable hereunder shall be the price of the order.

14. **PAYMENT CONDITIONS**

14.1 In consideration for the performance of the services by the Service Provider to the Company in terms of the Agreement, the Company shall pay the Service Provider a deposit of 30% (thirty) percent amounting to TBC on placing of order and balance of TBC on delivery and acceptance of the tractors and associated equipment to the Company's nominated airports. The prices are calculated excluding Value Added Tax.

The above prices (annual unit rates) applicable are as per the pricing schedule in **Annexure C**, include;

- (a) The unit price for the tractor, as per the tractor technical specification detailed in section **Annexure B**;
- (b) Grass cutting slasher, as per tractor technical specification detailed in section **Annexure B**;
- (c) Specified accessories, signage and branding costs;

- (d) Homologation, Natis registration and licensing costs of the tractors ;
- (e) Delivery cost to nominated site/s; and.
- (f) Basic introductory and familiarisation training for six (6) operators per nominated site.

14.2 The Service Provider shall obtain a bank advance payment guarantee for the deposit amount of 30% (thirty) percent in order for the Company to effect payment. The bank advance payment guarantee amount shall be in ZAR and shall include Value Added Tax and shall have a validity until delivery.

14.3 Payment will be effected by bank transfer. The Company's liability to the Service Provider will be deemed to have been met when the bank transfer is made.

14.4 The Service Provider assumes the entire risk for bank transfer, upon transfer being made. The Service Provider will ensure that the Company, at all times, has the correct banking information in order to make a bank transfer

15. **QUALITY OF SUPPLIES**

The supplies shall in respects be in accordance with and identical to the specifications, drawings and other requirements stipulated in the Agreement. All supplies including components and parts thereof, shall be new and unused. Where specific grades and special brands of commodities are specified in the Agreement, such grades and brands shall be supplied.

16. **TRANSFORMATION**

The Service Provider shall support the company's transformation objectives by engaging South African Black or Black Empowering Enterprises whether Black Women-owned, small, or Large Black or Black empowering suppliers and/or previously disadvantaged groups as far as possible for delivery of the required services.

**ANNEXURE C DETAILS OF CHARGES**

CHARGES
As per pricing schedule on tender document (Annexure C)

ESCALATION OF CHARGES
The prices shall be fixed for the duration of this Agreement and not be subject to escalation.

## ANNEXURE D– FORM OF SPECIAL TERMS AND CONDITIONS

This Special Terms and Conditions Form dated as of --- (the "**Special Terms and Conditions Form**") is being executed pursuant to the services agreement entered into between Company South Africa SOC Limited ("the Company") and \_\_\_\_\_ ( (Registration No: \_\_\_\_\_) (the "**Service Provider**") dated as of---- (to which a form of this Special Terms and Conditions Form was attached as an **Annexure D**), the terms of which are incorporated herein by reference. All capitalized terms used but not defined herein shall have the meanings given to them in the Services Agreement. Reference herein to the "**Parties**" shall be construed as reference to the Company and the Service Provider, collectively or individually, as the context may require.

### 1. DESCRIPTION OF SPECIAL TERMS AND CONDITIONS

None

**SIGNED** by the Parties and witnesses on the following dates and at the following places respectively:

FOR **AIRPORTS COMPANY SOUTH AFRICA SOC LIMITED**

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness \_\_\_\_\_

Witness \_\_\_\_\_

FOR **THE SERVICE PROVIDER**

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness \_\_\_\_\_

Witness \_\_\_\_\_



## ANNEXURE E - SERVICE LEVELS AND PENALTIES

SERVICE CATEGORY	PERFORMANCE STANDARD	METHOD OF MEASUREMENT	TARGET	PENALTIES
Delivery date of tractors and slashers at the nominated ACSA Airport/s.	Deliver tractor and slasher to airport by target date.	Time based.	To be delivered to airport site not later than the agreed date as per the as per the delivery programme and not exceeding eight (8) months.	Penalties for failure to meet the target delivery date shall be levied at 0.1% of the purchase order value per week up to a maximum of 10% of purchase order value.
Registration & licensing of the tractors at the respective regions traffic licensing authority.	Register & license tractor by target date.	Time based.	Registration & licensing to be completed prior to delivery date as per the delivery programme of the tractor to the nominated airport site.	Penalties for failure to meet the target timeline shall be levied at 0.1% of applicable purchase price per tractor per week.

## **ANNEXURE F– ANTI-CORRUPTION UNDERTAKINGS**

### **ANTI-CORRUPTION UNDERTAKINGS**

1. The Service Provider do hereby agrees and undertakes that in accordance with this agreement and the transactions contemplated by this agreement, it will comply with all applicable laws and anti-corruption laws, rules and regulations, decrees and/or official government orders of the Republic of South Africa, with particular reference but not limited to the provisions of the Prevention and Combating of Corrupt Activities Act 12 of 2004, the Airports Company Act 44 of 1993, the Airports Company Amendment Act 2 of 1998, the Public Finance Management Act 1 of 1999 and the Constitution of the Republic of South Africa; and the laws of any country where any of the parties will undertake the performance of their obligations in connection with this agreement.
2. The Service Provider represents, warrants and undertakes that it, and each of its owners, directors, officers, employees, and every other person acting on its behalf will not engage in acts or transactions (including any not involving a party), otherwise in violation of or inconsistent with the principles of any applicable anti-corruption legislation, including but not limited to anti-corruption laws of the Republic of South Africa or successor legislation. For the purposes of this undertaking, the applicable laws of the Republic of South Africa, and the laws of any other country where any of the parties will undertake the performance of their obligations, shall be deemed to apply to each party regardless of whether the party is otherwise subject to those laws.
3. The Service Provider do hereby agrees and undertakes that in accordance with this agreement whether in the Republic of South Africa or elsewhere, it and each its affiliates have and will apply effective disclosure controls and procedures; have and will maintain proper and accurate books, records and accounts, for a period of at least three (3) years after the period to which they relate, which, in reasonable detail, accurately and fairly reflect any and all payments made, expenses incurred and assets disposed of; and have and will maintain an internal accounting controls system that is sufficient to ensure the proper authorisation, recording and reporting of all transactions to provide reasonable assurances that violations of the anti-money laundering or anti-corruption laws of the applicable jurisdictions will be avoided, prevented, detected and deterred.
4. The Service Provider represents and warrants that:
  - 4.1. to the best of its knowledge and belief neither it nor any of its directors, or other officers, employees, partners, shareholders, agents, consultants or representatives:
    - 4.1.1. has at any time been found by a court in any jurisdiction to have engaged in any corrupt activity (or similar conduct);
    - 4.1.2. has at any time admitted to having engaged in any corrupt activity;
    - 4.1.3. has at any time been investigated or been suspected in any jurisdiction of having engaged in any corrupt activity (or similar conduct).

5. The Service Provider confirms that it does not know or have any reason to suspect that:
  - 5.1. the proceeds, funds or property that are the subject of any transactions under this agreement involving the parties are or will be derived from, or related to, any illegal and fraudulent activities under any applicable laws; and
  - 5.2. the proceeds, funds or property that are or will be the subject of such transactions are not intended to commit, further, or sponsor a violation of applicable law, including but not limited to violations of any tax, customs or revenue laws;
6. If at any time Airports Company of South Africa (the Company) becomes aware that any of the circumstances represented or warranted in this agreement are not as it has confirmed, it will notify the Service Provider immediately in writing.
7. In the event that the Company believes in good faith that the Service Provider may not be in compliance with the undertakings and/or requirements set forth in this agreement, then the Company shall advise the Service Provider in writing of its good faith belief and the Service Provider shall co-operate fully with any and all enquiries undertaken by or on behalf of the party in connection therewith, including the provision by the Service Provider of personnel and supporting documents and affidavits, if reasonably deemed
8. Service Provider shall subject to this agreement, allow the Company to review or audit its books, records and files relating to this agreement and will provide information and answer any reasonable questions that the other parties may have and will raise relating to its performance of this agreement.

9. **BUSINESS COURTESIES, GIFTS, ENTERTAINMENT AND DONATIONS**

- 9.1 The Company acknowledges that exchanging courtesies such as modest gifts, meals and entertainment are a common business practices intended to build generosity and establish trust in the business relationship. The occasional exchange of entertainment and gifts, as stipulated in the Airports Company South Africa Code of Ethics and Business Conduct policy, may be appropriate, providing such courtesies are not specifically projected to influence any procurement or sales decision and the Company employee who obtains such gift.
- 9.2 Privileges, bribes or kickbacks of any kind must never be solicited, accepted or offered, either directly or indirectly. This includes, but not limited to money, loans, equity, special privileges, personal favours, benefits or services. Such favours may be considered bribery, which infringes South African Law and is in contradiction with the Company Code of Ethics and Business Conduct.
- 9.3 Any employee / Service Provider found guilty of the above actions shall be disciplined by the Company and will face criminal action. Furthermore, any person who has offered the Company employees a bribe or who has given a bribe as a result of a request / demand from an employee of the Company, shall have their concluded contracts terminated with immediate effect, face criminal action and shall be excluded from doing business with the Company in future.

10. **The Company TIP-OFFS ANONYMOUS**

- 10.1 The Service Provider is required, in terms of the Airports Company South Africa Code of Ethics, to report any unethical activities to the Company's Tip-offs Anonymous Hotline to: 0800 00 8080.
- 10.2 Users of the the Company Anti-Corruption Hotline shall act in good faith and shall not make false accusations when reporting any concerns. Any party who knowingly or recklessly makes false or misleading statements or disclosures shall be subject to disciplinary action (internal parties) alternatively face civil / criminal prosecution.

## ANNEXURE G: POPIA ANNEXURE:

### CONFIDENTIALITY AND DATA PROTECTION

Save as provided in this clause (*Confidentiality and Data Protection*), each Party shall, and shall procure that its Affiliate and their respective officers, directors, employees, agents, auditors and advisors shall, treat as confidential all information relating to the other Party or its Affiliates thereof or relating to their respective businesses that is of a confidential nature and which is obtained by that Party in terms of, or arising from the implementation of this Agreement, which may become known to it by virtue of being a Party, and shall not reveal, disclose or authorise the disclosure of any such information to any third party or use such information for its own purpose or for any purposes other than those related to the implementation of this Agreement.

The obligations of confidentiality in this clause shall not apply in respect of the disclosure or use of such information in the following circumstances:

- in respect of any information which is previously known by such Party (other than as a result of any breach or default by any Party or other person of any agreement by which such Confidential Information was obtained by such Party);

- in respect of any information which is in the public domain (other than as a result of any breach or default by either Party);

- any disclosure to either Party's professional advisors, executive staff, board of directors or similar governing body who (i) such Party believes have a need to know such information, and (ii) are notified of the confidential nature of such information and are bound by a general duty of confidentiality in respect thereof materially similar to that set out herein;

- any disclosure required by law or by any court of competent jurisdiction or by any regulatory authority or by the rules or regulations of any stock exchange;

- any disclosure made by a Party made in accordance with that Party's pursuit of any legal remedy;

- any disclosure by a Party to its shareholders or members pursuant to any reporting obligations that Party may have to its shareholders or members, provided that each such shareholder or member is notified of the confidential nature of such information and is bound by a general duty of confidentiality in respect thereof materially similar to that set out herein;

In the event that a Party is required to disclose confidential information as contemplated in this clause, such Party will:

- advise any Party/ies in respect of whom such information relates (the "**Relevant Party/ies**") in writing prior to disclosure, if possible;

- take such steps to limit the disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;

- afford the Relevant Party/ies a reasonable opportunity, if possible, to intervene in the proceedings;

- comply with the Relevant Party/ies' reasonable requests as to the manner and terms of such disclosure; and

- notify the Relevant Party/ies of the recipient of, and the form and extent of, any such disclosure or announcement immediately after it was made.

Either Party may, by notice in writing, be entitled to demand the prompt return of the whole or any part of any confidential information supplied by it to the other Party, and each Party hereby undertakes to comply promptly with any such demand.

In line with the provisions of Protection of Personal Information Act, No 4 of 2013 (POPIA), particularly section 20 and 21, the service provider (referred to as Operator in POPIA) shall observe the following principles when processing personal information on behalf of the Company (referred to as Responsible Party in POPIA):

the Service Provider shall only act on the Company's documented instructions, unless required by law to act without such instructions;

the Service Provider shall ensure that its representatives processing the information are subject to a duty of confidence;

the Service Provider shall take appropriate measures to ensure the security of processing. The Service Provider shall ensure and hereby warrants that they have minimum IT and or physical security safeguard to protect personal information;

the Service Provider shall notify the Company immediately where there are reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by any unauthorised person;

the Service Provider shall only engage a sub-operator with the Company's prior authorisation and under a written contract;

the Service Provider shall take appropriate measures to help the Company respond to requests from data subjects to exercise their rights;

taking into account the nature of processing and the information available, the Service Provider shall assist the Company in meeting its POPIA obligations in relation to the security of processing, the notification of personal information breaches and data protection impact assessments;

the Service Provider shall delete or return all personal information to the Company (at the Company's choice) at the end of the contract, and the service provider shall also delete existing personal information unless the law requires its storage; and

the Service Provider shall submit to audits and inspections. The Service Provider shall also give the Company whatever information it needs to ensure that the Parties meet their Section 20(1) obligations.